

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al., *
*
Plaintiffs, *
*
v. * 05-CV-0329 GKF-PJC
*
TYSON FOODS, INC., et al., *
*
Defendants. *

VIDEO DEPOSITION OF LIZ WEATHERLY

ANSWERS AND DEPOSITION OF LIZ WEATHERLY, produced as a witness at the instance of the Defendants Cargill, Inc. and Cargill Turkey Production, LLC, taken in the above-styled and -numbered cause on the 9th day of April, 2009, A.D., beginning at 1:01 p.m., before Lisa Smith, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC, located at 100 West Fifth Street, Suite 400, Tulsa, Oklahoma, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

Walker Declaration Exhibit 14

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1 ALSO PRESENT:

2 ANN DAVIS - Videographer

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P R O C E E D I N G S

(Exhibit Nos. 1 through 3 were marked.)

THE VIDEOGRAPHER: This is Tape No. 1 to the videotaped deposition of Liz Weatherly in the matter of State of Oklahoma versus Tyson Foods being heard before the U.S. District Court for the Northern District of Oklahoma, Case No. 05-CV-0329 GKF-PJC. This deposition is being held at 100 West Fifth, Suite 400, Tulsa, Oklahoma on 4/9/2009 at 1:01 p.m. My name is Ann Davis. I am the videographer. The court reporter is Lisa Smith.

Counsel will please introduce yourselves and affiliations and the witness will be sworn.

MS. HILL: Theresa Hill for Cargill, Inc. and Cargill Turkey Production, LLC.

MS. LLOYD: Jennifer Lloyd for George's, Inc.

MR. MIRKES: Craig Mirkes for Peterson Farms.

MR. FREEMAN: Bruce Freeman for Simmons.

MR. WILKERSON: And Brian Wilkerson for Plaintiffs.

LIZ WEATHERLY,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HILL:

Q. Shall I call you Ms. Weatherly; is that fine?

A. That's fine.

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1 Q. Thank you.

2 Ms. Weatherly, again for the record, my name
3 is Theresa Hill and we met today prior to your deposition.
4 I know you've probably given sworn testimony before, but
5 I'd like to go over a few ground rules --

6 A. Okay.

7 Q. -- for the deposition today.

8 If you answer one of my questions, I'm going
9 to assume that you understood the question. But if you do
10 not understand the question, please stop me and ask me to
11 rephrase and I'll try to ask a better question that you
12 understand. Are you agreeable to that?

13 A. Yes, ma'am.

14 Q. The court reporter also needs audible answers,
15 yeses or nos, rather than shaking or nodding your head or
16 uh-huhs are huh-uhs are sometimes hard to distinguish on
17 the record.

18 A. Okay.

19 Q. The other thing we'll try our best to do is not to
20 step on each other, so please let me try to get my question
21 out and then you may answer after that.

22 I'm gonna hand you what the court reporter
23 has marked as Exhibit No. 1. Can you identify that
24 document for me, please.

25 A. Subpoena to testify at deposition or to produce

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1 documents in a civil action. It is addressed to me.

2 Q. All right. And did you bring any documents with
3 you today?

4 A. The only document that I have is my 1099s of what
5 I was paid for the time that I worked.

6 Q. Okay. And do you have any e-mails relating to
7 your work on this matter?

8 A. No.

9 Q. Did you have -- did you ever use your e-mail for
10 your work on this matter?

11 A. Other than just documenting our hours and mileage,
12 no.

13 Q. All right. What did you do to prepare for today's
14 deposition?

15 A. We just had a pre-meeting last week with the group
16 and that's it. They told us to bring our 1099s.

17 Q. And which group meeting did you attend? On what
18 day did you go to the meeting?

19 A. I believe it was last Tuesday. I'm not sure of
20 the date on that. We just met for about 30 minutes just to
21 kind of go over what we did two years ago.

22 Q. Did you have any other conversations with anyone
23 else other than conversations at that pre-meeting?

24 A. No.

25 Q. Did you do anything else to prepare for your

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1 deposition today?

2 A. No.

3 Q. And who was at the meeting that you attended in
4 preparation for this deposition?

5 A. Mr. Garren with Riggs Abney and Steve Steele, who
6 was my boss, Mike Huff, Mike Nance, Danny Lynchard. And
7 let's see, someone else came in at the end when we were
8 leaving.

9 Q. Did -- what did Mr. Garren tell you about the
10 deposition today?

11 A. Just that there'd be a lot of you here and that
12 you'll probably be asking if we had any documents and
13 things and that he assured that all of that had already
14 been turned over.

15 Q. Did he tell you not to look for documents because
16 they'd already been turned over or did he --

17 A. No.

18 Q. -- tell you to go back and check your records and
19 make sure you didn't have anything?

20 A. Neither, because we don't have them.

21 Q. Okay. Let's go over your education and background
22 relatively quickly. Prior to joining the Tulsa Police
23 Department, give me a brief description of your education.

24 A. I taught special education for almost
25 eight-and-a-half years at public school systems. I started

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1 out in Moore, Oklahoma. I taught in Yukon, Glenpool and
2 then I became a Tulsa police officer.

3 Q. What year did you become a Tulsa police officer?

4 A. '98.

5 Q. Where did you go to college?

6 A. I got my degree at Northeastern State University
7 in Tahlequah.

8 Q. And what years were you in Tahlequah?

9 A. Well, it took me a little while to finish my
10 degree, so there's a couple times. I actually graduated in
11 1990.

12 Q. Approximately how many -- when did you start your
13 education in Tahlequah?

14 A. To finish up was -- let's see, I went back in --
15 '86 is when I went back to school.

16 Q. So was 1986 the first time that you lived in
17 Tahlequah?

18 A. Yes.

19 Q. And did you live in Tahlequah continuously from
20 1986 through 1990?

21 A. Predominantly, yes. I also would come home and
22 stay with my parents. They lived in Okmulgee.

23 Q. Is that where you grew up, in Okmulgee?

24 A. Yes, ma'am.

25 Q. When did you join the Tulsa Police Department,

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1 what year?

2 A. 1998, July of '98.

3 Q. Back to your education. What is your degree in?

4 A. Special education.

5 Q. Did you take any classes in biology or chemistry?

6 A. Just the general required classes, nothing
7 overboard.

8 Q. Since 1998, give me a quick overview of your work
9 with the Tulsa Police Department.

10 A. I've been in patrol the whole time. And the last
11 five years, I'm also a field training officer. I'm also a
12 member of the Tulsa Police Honor Guard.

13 Q. What is the Tulsa Police Honor Guard?

14 A. We do functions like funerals for dignitaries. We
15 do graduations, funerals and anybody comes into town that
16 needs escorting or something like that.

17 Q. Describe the nature of your work on patrol.

18 A. Basically we're ready for call. I work third
19 shift from 4 p.m. to 2 a.m. and they assign calls for
20 service and we respond to that and take reports and patrol
21 the streets.

22 Q. Is any of your work for the Tulsa Police
23 Department investigative work?

24 A. We prepare reports for our investigative team, our
25 detectives division. It's not as in-depth as it would be

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1 if I were in the detective division. We prepare the
2 reports and initial witness statements and things of that
3 nature. If we have opportunity and if the crime is fresh
4 enough and we've got good leads that we can go ahead and go
5 on and hopefully catch the suspect and try to close it up
6 that way before we go to the detective division. Mostly,
7 it's just a preparatory for our detective division.

8 Q. You said you initial witness statements. Do you
9 take witness statements?

10 A. Yes, from victims in the field.

11 Q. You actually do the interviews of the persons?

12 A. They write them out. Yes, we kind of give them --
13 give them an opportunity to make their statement of what
14 happened to them or what they might have seen in relation
15 to specific crimes.

16 Q. And do you actually take and collect evidence?

17 A. We can, yes, depending on the crime. You know, if
18 it's a major crime, we usually call our detective division
19 and they like to prepare their cases on their own.

20 Q. But if it's a situation that needs immediate
21 attention, you certainly have the ability to make the
22 judgment of whether you need to take some evidence in the
23 field?

24 A. Yes, ma'am.

25 Q. And then you collect that evidence. Do you serial

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1 it or record it?

2 A. Yes. We have a property receipt that we fill out
3 and mark them and tag them in their chain of custody is
4 released to -- we put them in a secure facility. The
5 property room people will come and pick it up the next
6 business day.

7 Q. And are you involved ever in obtaining warrants or
8 otherwise to enter property to collect evidence or --

9 A. I'm sorry. Say that again.

10 Q. Are you ever involved in obtaining warrants or to
11 enter property?

12 A. Warrants for property? I don't understand that.

13 Q. Okay. What do you do if you determine there's
14 evidence in private property that may be needed? Are you
15 ever involved in that part of the investigation?

16 A. No.

17 Q. Tell me, do you have any experience in
18 agriculture?

19 A. No.

20 Q. Ranching or farming?

21 A. No.

22 Q. How about prior to this case, any experience in
23 the raising of poultry?

24 A. No, ma'am.

25 Q. In your work for the Tulsa Police Department, have

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1 you received any Hazmat training?

2 A. Yes, ma'am.

3 Q. Give me a description of what that training
4 included.

5 A. Yearly, we're updated. Hazardous materials as in
6 chemical spills, blood-borne pathogens and just the general
7 that we do every year.

8 Q. On patrol have you ever responded to an incident
9 involving hazardous materials?

10 A. On meth labs, I have.

11 Q. And did you use special gear when you responded to
12 that incident?

13 A. Normally, patrol, once we discover a meth lab, we
14 pull out and so we do not gear up but our cleanup team does
15 that we activate to come out to the field. And Tulsa Fire
16 also responds to our meth labs.

17 Q. Any other incidents that you've dealt with
18 hazardous materials?

19 A. No.

20 Q. Tell me how do you know -- how do you know Steve
21 Steele?

22 A. He was a major on the police department.

23 Q. Have you ever worked for Steele Investigations and
24 Research, LLC?

25 A. Other than working for the poultry thing, no.

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1 This was the only time.

2 Q. And who did you work for for this poultry project?

3 A. Overall, it was Lithochimiea who paid our checks.

4 Q. What is Lithochimiea?

5 A. My understanding of it was, is they were the ones
6 that were working with -- I'm really not sure on that, so I
7 don't want to speak out of turn. But what they provided us
8 with were different materials to use to locate the chicken
9 houses and for our different assignments that we were given
10 to do.

11 Q. Who paid you?

12 A. Lithochimiea.

13 Q. Do you know who's involved in Lithochimiea?

14 A. Not anymore. And I can really vaguely remember
15 anybody's name since it was so long ago that I worked for
16 them. I pretty much was just part of the investigative
17 team and took my direction from Steve Steele.

18 Q. Did you ever meet with Dr. Bert Fisher?

19 A. Yes. I do remember that name.

20 Q. Okay. Tell me about a meeting where Dr. Bert
21 Fisher was present.

22 A. We had -- when we first started this, I believe
23 our first meeting was in early 2005. I want to say around
24 April sometime. I'm not really sure about the date. It
25 was just a general meeting of what violations they believed

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1 that the poultry houses were having and different things
2 for us to look for when we started our investigations.

3 Q. You received training, then, on violations of the
4 poultry industry?

5 A. Things to look for. I'm not sure on the legal
6 aspect of what -- you know, how much litter was allowed to
7 be disbursed per acre. I don't know the numbers on that.
8 But they did teach us what to look for that would insinuate
9 that it was too too much.

10 Q. Did you believe that you were investigating
11 violations of law?

12 A. Yes, ma'am.

13 Q. What else can you tell me about this early meeting
14 that Bert Fisher was present?

15 A. I just remember there were a lot of us that -- the
16 team that we put together, we would go out in pairs and
17 there were several of us there that were gonna go on
18 different times to do the investigations. They showed us
19 some pictures of what the actual spreading trucks looked
20 like, the ones that distributed the litter through the
21 fields, what to look for there. Showed us pictures of
22 chicken houses, what to look for, if they were active or
23 nonactive. We were given aerial pictures of where they
24 might be located and GPS locations of how to locate them.

25 Q. Did they give you some examples or pictures of

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1 violations?

2 A. They showed us pictures of like huge mounds of
3 chicken litter that weren't covered, and I believe that at
4 the time they showed us -- I'm not sure if it was that
5 meeting or another meeting where they had videos showing
6 how the chicken or how the litter trucks would spread the
7 litter, you know, that it came out the end, you know, just
8 general things, what to look for, how to determine that
9 that was a litter truck versus just any other kind of heavy
10 duty truck.

11 Q. And they told you these were things that you
12 needed to note and look for to determine whether they were
13 violations?

14 A. They told us to document these things and they
15 would determine if it was -- you know, I wasn't the one who
16 determined if it was too much or not. All we did was take
17 documentation of people spreading litter, working chicken
18 houses and we documented if they were working chicken
19 houses or dilapidated chicken houses they turn into hay
20 houses, you know, that kind of deal. Our actual field team
21 that I was a part of didn't determine if it was a violation
22 or not. We just looked for things that might be and went
23 from there.

24 Q. But in gathering evidence that would be helpful
25 for someone to determine whether there was a violation or

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1 not, they told you what to look for; is that correct?

2 A. Yes, ma'am.

3 Q. And can you give me any other specifics other than
4 looking for huge mounds or mounds of uncovered litter or
5 spreading trucks, anything else that they told you to look
6 for?

7 A. Basically that's what we did. We just went out
8 day after day taking photographs and documenting what farms
9 and locations that they were spreading to see. As we got
10 on into the investigation -- and I can't tell you the time
11 line on that because we did this for -- I did it for about
12 a year-and-a-half. I think they did it longer than I did.
13 But things started changing in the industry and we were
14 looking for different types of cars or not cars, but
15 transport vehicles.

16 Q. What is your understanding of what changed in the
17 industry?

18 A. That the people that owned the farms, not
19 necessarily -- I mean, the farmers that ran the chicken
20 houses, that they might not have been aware of how much to
21 spread per acre and that they didn't want to lose their
22 livelihood and their -- just their way of life or their
23 business, shutting it down, that they would -- like I said,
24 later on in the investigation, the giant 18-wheelers would
25 come and then we could -- we documented where they would

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1 take the litter from the houses and actually put it into an
2 18-wheeler and then it was taken somewhere out of the
3 watershed. That came later on in the investigation. But
4 early on, we didn't -- I did not observe those, the giant
5 18-wheelers that would come and do that. So I felt like
6 that word was getting out, you know, about the pollution
7 and that they wanted to do something better was my feeling
8 on it.

9 Q. Did you visit with any growers?

10 A. Did I get to visit with them?

11 Q. Yes.

12 A. No, I did not.

13 Q. So you did not take any -- any influential witness
14 statement?

15 A. No. Actually, we were asked not to -- to talk to
16 any growers. That we were just on public roadways and
17 getting information that we could from that standpoint and
18 that viewpoint.

19 Q. So you received specific instructions not to
20 gather certain types of evidence?

21 A. Well, not to go on their property, you know, their
22 private property. So we just stayed on public access and
23 documented and photographed what we could from where we
24 were. And some houses we could not visualize from the
25 ground, so we had air support, but they didn't go with us

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1 every time.

2 Q. Tell me more about this first meeting, the
3 training meeting. You've told me Bert Fisher was involved.
4 Who else was at this first training meeting?

5 A. I cannot tell you the names of the people that I
6 didn't already know personally. I do remember Steve Steele
7 being there because he was the lead of it. Rod Hummel was
8 there. Mike Huff, Mike Nance. Basically just our
9 investigative team. Probably Shane, Darrin Froeming. I'm
10 just trying to remember the investigators that went out
11 with us on these different trips. I can't tell you who --
12 if there were different lawyers or people there that
13 actually ran the meeting. I know there were, but I don't
14 know their names.

15 Q. Okay. But you believe there were other attorneys
16 and perhaps other scientists who were there?

17 A. Yes, I do.

18 Q. Tell me about -- how did they show you these
19 pictures and what to look for to note violations? Was
20 there a slide show?

21 A. No, I don't remember a slide show. The first
22 meeting -- we did it in different stages. Our first part
23 of investigating was just to go out and see if the chicken
24 houses -- if the chicken houses were actually working at
25 the time and that took a long time. There were a lot of

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1 chicken houses. And -- so we just split it up. They gave
2 us aerial pictures in looking down on it that the roof of
3 it looked like it might be a chicken house, and they gave
4 us GPS coordinates to follow so we could try to find these
5 houses and just drive by and see if it was an actual
6 working house or not. That took several months.

7 The other thing on that is they did pass us
8 out those aerials at that time, just probably pictures,
9 still -- there were still pictures that they had blown up,
10 I believe, that they pasted on the wall just to show the
11 chicken spreader, what a chicken house looked like because
12 some of us had not been around that. That was very basic
13 on that first meeting.

14 Q. And this was at the first meeting that you're
15 describing?

16 A. Uh-huh.

17 Q. And I do understand from Mr. Steele and even
18 Mr. Hummel that the first assignment was exactly as you've
19 described, to determine which poultry houses were active
20 versus inactive.

21 A. Uh-huh.

22 Q. What other assignments did you receive after that
23 first assignment?

24 A. Basically that's all I did. I was one of the
25 field investigators and my partner was Rod Hummel for the

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1 most part. I rode with him most of the time. And he did
2 the driving and I did the documentation for most of it and
3 we would both snap pictures. And if we had a chance to
4 take a video, we'd take video, but were mainly pictures and
5 just documenting where litter was being spread and from
6 what house.

7 Q. Were you involved in part of the project to
8 determine or track poultry litter being hauled?

9 A. Hauled from where?

10 Q. Moved around the watershed anywhere.

11 A. Yes, that was part of it. We'd see a truck coming
12 out of a farm and we would follow it to see where it would
13 -- where it would go.

14 Q. Was that part of the initial assignment or was
15 that something that came about later on in your work?

16 A. I want to say it was more later on because our
17 main thing was just to find what houses were working to
18 begin with. But like I said, gradually it just started
19 progressing when we got most of the documentation done. If
20 it was a working house or not, then we did move on to a lot
21 of that, to a lot of following the chicken spreaders and --

22 Q. Did you also receive assignments to observe land
23 application activities?

24 A. Yes.

25 Q. Okay. And was -- when did you receive those

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1 assignments?

2 A. Basically the same time. Like, I can't give you
3 the date, but the same time that they told us to start
4 documenting -- following the truck that was filled with
5 litter, watching them fill a truck from the chicken houses
6 or if they've already cleared out the houses that they were
7 putting into the spreaders, to follow that from that farm,
8 document what farm that was and where it went to, whatever
9 field or another farm or wherever it went, document where
10 that went. And if they went ahead and spread, they wanted
11 us to document that, too, at that point.

12 Q. As your assignments changed and become -- became
13 more involved, did you have another planning meeting or
14 session with Dr. Fisher and others?

15 A. I remember they came out a couple of times with us
16 when we were actually in the field. I don't recall a
17 meeting, a formal meeting that I attended.

18 Q. Okay. Tell me about the times that Dr. Fisher or
19 others were out with you in the field.

20 A. There was one -- and I can't tell you the exact
21 place of it -- that we were around a -- it was a pond or a
22 creek or something that had a lot of algae and green --
23 greenness in it and he showed us -- explained to us that
24 that could possibly be a result of over-fertilizing with
25 the chicken litter. That the runoff and that's what it --

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1 how it kills the water.

2 Like I said, I'm not an expert in that area,
3 but that's the kind of things that he wanted us to look for
4 other than -- that was part of the progression. You know,
5 it first started with the trucks, seeing where they were
6 going and their applications and then, I guess, to gather
7 further evidence that it was destroying different waterways
8 was that, to look for these green things. And he just
9 wanted us to document with pictures and our logs the
10 location of those water areas, if it was a pond or a creek
11 or runoff, and to show the -- the overgrown algae that was
12 in the ponds.

13 Q. What were you told to look for in particular?

14 A. On the water?

15 Q. Yes.

16 A. That it looked real thick, thick and green, kind
17 of a lime green to dark green, just overgrowth of that.
18 And he said that that just wasn't natural. He said that
19 was -- I think he told us that that was coming from the --
20 too much of the litter being applied.

21 And -- so when we would drive around and
22 watching the trucks and if we happen to come across a
23 waterway -- we didn't go to specific waterways that I was
24 assigned to. It's just if it happened to come along our
25 areas that we were running to photograph that.

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1 Q. So the instructions were picture -- take pictures
2 of any water that you see?

3 A. Well, if it had an overgrowth of algae, if it was
4 covered in green and looked thick, you know, not a healthy
5 water.

6 Q. Was there any other types of water that you were
7 supposed to look for, such as in a pond or moving water or
8 was it any water with algae in it?

9 A. Just any -- anything that we came across. It was
10 not like specifically assigned to my -- my team, like they
11 did the houses. They said, you know, here's a GPS and go
12 check this one out. We didn't have that on the water.

13 Q. We'll talk about this a little more later. Did
14 you accompany any sample teams who were out in the -- in
15 the watershed taking samples?

16 A. Samples of water?

17 Q. Or soil or --

18 A. No.

19 Q. -- poultry litter?

20 A. No.

21 Q. I'm gonna ask you to take a look at Exhibit No. 2.
22 The court reporter has marked that.

23 MS. HILL: Did I hand you guys?

24 MS. LLOYD: Yeah, you did.

25 Q. (BY MS. HILL) All right. These are blank forms

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1 that we found in the production of documents relating to
2 investigators' work on this project and I want to ask you a
3 few questions about these.

4 A. Okay.

5 Q. On page -- the first page of Exhibit 2, which is
6 OK-PL-0002252, are you familiar with this form?

7 A. Yes, I am.

8 Q. And did you use this form?

9 A. Yes, we did.

10 Q. And what did you use this form for?

11 A. This is our general documentation form that -- to
12 make it easier on us, things that they wanted us to
13 document, we would basically just fill in the blanks,
14 locations of where the chicken house is or where the
15 spreading site might have been, anything. Like on the
16 center part of this, talking about the physical condition
17 of the structure. As I said before, some of the houses
18 were dilapidated, turned into hay houses or whatever. This
19 is where we would write -- document that it's been
20 abandoned if we perceived it to be inactive, if the fans
21 were running, you know, just anything that was on here, we
22 could check it yes or no.

23 Q. Did you receive any specific training on how to
24 fill out these forms?

25 A. It's just pretty basic. We just -- it asked for

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1 our names, latitude and longitude where we were. We got
2 that from the GPS that we were using, signs. It's just --
3 it's just real basic. There's not a whole lot of training
4 to that.

5 Q. Okay.

6 A. They did show us -- if you're asking about the
7 chicken house part, they would show us pictures of the
8 newer houses that had the nice fans and ventilation and
9 stuff versus the old houses that didn't really have that.
10 They just propped the windows up, so -- they did show us
11 that, but --

12 Q. Okay. So looking down in kind of the middle
13 section, there's a checkmark for ventilation fans. They
14 showed you what that was?

15 A. Yes.

16 Q. All right. And did they also show you some
17 pictures of some new houses?

18 A. Yes. I mean, just the newer updated houses, yes.

19 Q. All right.

20 A. Where there would be several ones because the
21 older ones were just like maybe one run of a house and then
22 as the newer ones and bigger farms would have really nice
23 ones and just several -- several rows of chicken houses,
24 so --

25 Q. All right. And that assisted you in filling out

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1 the check box of structure?

2 A. Yes. We would just check it off yes or no if the
3 fans were running, if it was in good, fair or poor
4 condition. It's pretty basic.

5 Q. All right. Under ventilation fans, covered
6 litter/cake storage.

7 A. Uh-huh.

8 Q. Can you tell me what that means.

9 A. Okay. That had nothing to do with the fans.
10 That's just the next category. They told us to look for --
11 they told us at a certain time of year that to clean out
12 the houses, they would go through and just scoop out the
13 litter, that the chickens would just defecate basically for
14 long periods of time and they would have different times of
15 year where they would go through and clean it out.

16 The cake was the top portion of the litter
17 pile that was kind of white. And covered litter/cake
18 storage, if they were to have cleaned out a chicken house
19 and just brought it out, say, next to the house and just
20 made a pile of chicken litter, they wanted us to -- they
21 said that that wasn't necessarily wrong. But if they
22 didn't cover it, that that was. Because if the rain came,
23 that that would wash it into the soil at high rates. That
24 was unacceptable.

25 So we would just make -- they wanted to know

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1 if the litter cake was near the chicken house is what this
2 is to be from our view. So if we drove up to a house --
3 one in particular that's popping in my head that when you
4 said the covered litter, there was a house and there was a
5 large pile. I mean, it was -- I would say -- I don't know
6 -- many. Like, if you were to get a load of dirt to put in
7 your back yard, I would say it was four or five truckloads
8 of chicken litter and it was huge and it was uncovered.
9 And we checked it one week and then went back the next week
10 and it was still uncovered. That kind of deal was what
11 they wanted us to look for.

12 Q. Do you recall the name of the owner of that farm?

13 A. No, I do not.

14 Q. Do you know if the owner of that farm had a
15 contract with any of the defendants in this case -- in this
16 lawsuit?

17 A. I couldn't tell you that, either. The way that we
18 decided if it was just individually owned or if one of the
19 bigger companies owned it, they would have their sign
20 posted somewhere that says it's a Simmons house or a
21 Peterson house. I believe that it was posted, but I cannot
22 tell you that for sure. I would have to go back to our
23 notes and pictures. It was so long ago.

24 Q. If it wasn't posted, how would you determine who
25 owned that land?

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1 A. Just by records of who owned the property and that
2 chicken house. But most of the ones that we -- you know,
3 we didn't -- I mean, we just wrote down, like, the numbers,
4 GPS coordinates, where it was. And then from that, it went
5 to whoever took it to Lithochimiea and then they could find
6 out who actually owned the properties and that. But most
7 of the ones that we did had some kind of sign up on it, who
8 provided them their chickens.

9 Q. Other than taking a picture of the sign, did you
10 do any other investigation into who owned the property that
11 you were observing?

12 A. Like the individual owner that would, like, run a
13 house for Simmons or something; is that what you're asking
14 me?

15 Q. Other than taking a picture of a sign along the
16 road, did you do any other investigation to determine who
17 owned a piece of property that you were observing?

18 A. We would take pictures of mailboxes if it would
19 have their name on it and address to document the sign
20 along with the GPS coordinates. But no, if you're asking
21 if I went into records or something, I did not do that.

22 Q. And you didn't interview any of the land owners or
23 neighbors in the area?

24 A. No, did not.

25 Q. And did you do any other investigation to

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1 determine which company that grower might be raising
2 poultry for other than taking a picture of the sign?

3 A. No. Just the signs. And trucks that came in, if
4 they were labeled, we would get a picture of that.

5 Q. If there were no signs present, you could not
6 determine any other information about whether one of the
7 companies in this lawsuit was involved in that operation?

8 A. I didn't. I don't know what happened after we
9 released our -- we turned in our notes every day at the end
10 of our shift. I don't know what happened to it after that.

11 Q. When you told me that they told you that uncovered
12 litter was a violation, Bert Fisher told your group that?

13 A. I can't tell you if it was Bert Fisher, but I
14 assume it was because he was the one that let us know of
15 all the things that we were looking for.

16 Q. And tell me on this form down under other, what is
17 stacked used litter/cake?

18 A. Oh, the way that I interpreted that, like
19 underneath here, it says stacked new litter and on the top
20 stacked used litter. If they had -- because they told us
21 if they just cleaned house and they put the pile -- you
22 know, the big pile of litter out there and it wasn't
23 disturbed, that that might be a new one. Or if we went to
24 that house the day before and there was nothing there and
25 there was a pile the next day or they were actively

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1 cleaning out the houses, that would be a new -- a new stack
2 of litter. And if it was used, they're actively scooping
3 some of it out and putting it into the spreader trucks and
4 trying to distribute it out was my understanding on that.

5 If you could -- if you could tell if it had
6 like grass growing on it, it was probably an old stack of
7 litter, you know, versus new. And just little things like
8 that, that if we could see anything that might represent
9 that it'd been sitting there for a while and not just
10 freshly taken out of a house.

11 Q. Okay. And when you did these observations to
12 determine whether poultry houses were active or not, how
13 long would you watch an operation?

14 A. Well, some of them are obvious. Like I said, if
15 they're -- if you could see right through them, the older
16 houses, you could see right through them, they would have
17 tractors and hay and junk houses or whatever, that was
18 obviously an inactive house. If it was active -- if what
19 we were trying to determine if it was active, if we can see
20 workers out there, if you saw chickens about or chicken
21 feathers, if the windows were open for ventilation,
22 sometimes you could see the chickens, you could hear the
23 chickens, just different -- different factors. I mean, we
24 did what we could at the vantage point that we had.
25 Sometimes we would write possible, you know, fans are

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1 running. We don't see any signs of poultry of any kind,
2 but, you know, the fans might be running on these newer
3 houses. And we didn't think that they would be running a
4 fan if there weren't any poultry inside. So we would just
5 make general documentations.

6 Q. So was this pretty much a snapshot at the time to
7 determine whether it was active or not?

8 A. We would visit the same houses. Like, for
9 instance, I could only go a couple times a week so it
10 didn't interfere with my other job. Sometimes they would
11 go out three or four times a week. But when I went, it was
12 not uncommon to travel the same route to see if there were
13 any changes from day to day.

14 Q. Did you document all of those changes?

15 A. Yes.

16 Q. So if you went back to the same location day after
17 day, there would be a note on it similar to this piece of
18 paper we're looking at right here?

19 A. Yes. Every time we visited a house, we filled one
20 of these out. And we did several notebooks worth of these.
21 We would just date it so it would show that we went today
22 and they would go next week. We would have the same route
23 the next week. We divided it out. We had such a large
24 area to cover that different teams would have a certain
25 section of the map for that day. You know, Steve would say

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1 I want you to take Houses 50 through 60, the way -- however
2 they numbered it out.

3 Q. All right. So on the day that you drove by
4 Operation X, I'm trying to determine how you -- how you
5 knew whether it was used or new litter by just your
6 drive-by observation. Can you tell me whether you received
7 any other instructions on checking these boxes of
8 used-versus-new litter?

9 A. No, not any further instruction on that. The one
10 that you're -- you're talking about, when we saw that pile
11 that was just incredible, we were curious on our own just
12 to go back and see what are they gonna do with that because
13 that was an awful lot. And you know, like I said, the next
14 day it was -- we got pictures where you can see the rain in
15 the picture falling down on an uncovered stack of litter.

16 But the versus new to old, you know, it
17 wasn't there the week before and then it was. So that's
18 how we determined that it was new. I don't think we had a
19 specific time that new meant 24 hours or a week or a month.
20 I don't -- we didn't have any kind of instruction like that
21 to determine where the cut-off line was between new and
22 old. They just wanted major observations. Like I said, if
23 you saw grass growing out of it. There was one where there
24 was cows up on a chicken litter pile munching on some grass
25 that was growing out of it.

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1 Q. This large pile that you've mentioned twice now
2 that you kept going back to to observe, all your notes on
3 that pile would be in the documents --

4 A. Yes, ma'am.

5 Q. -- that you turned over?

6 A. Yes, ma'am.

7 Q. Okay. Did you ever make any measurements of the
8 litter piles that you observed?

9 A. No, no. Just visually. We didn't go onto
10 anybody's property.

11 Q. And going back to this form, then, looking at
12 litter odor, what training did you receive to determine
13 whether there were litter odors or other odors from farming
14 operations?

15 A. Other than just being there and smelling it, not a
16 whole lot. I mean, it was just -- it was just -- there was
17 one time I remember a liquid spreader that just about
18 killed us all because it was just horrible. That was
19 undeniably a telltale sign that somebody was spreading on
20 liquid ones, but that one came, I think, from the egg
21 houses, that they got the liquid fertilizer on that part.

22 It depended on the time of year. It depended
23 if the doors were open to the chicken house. You know, you
24 could just smell it in the air. It was nothing that was
25 overwhelming going by a chicken house but sometimes the

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1 spreading process, you know, just being in the air, it
2 didn't -- it would dissipate after a while, but it was just
3 something that -- it was another way for us to look for
4 somebody possibly spreading around the area. We'd ride
5 around with our windows down and if we got a whiff of
6 chicken litter, then we'd follow our noses.

7 Q. Did you get any training in odors of liquid versus
8 dry manure generally?

9 A. No. That was an on-the-point training for me when
10 the liquid spreaders went down. I thought I was gonna pass
11 out.

12 Q. How about any type of manure versus another, did
13 you receive any training or information?

14 A. Oh, I've been around, you know, cows and stuff.
15 My dad had a few cattle but nothing huge, ranching or
16 anything. I smelled that. I've smelled dead animals on
17 the side of the road. But other than -- you know, we
18 didn't have a sit-down and this is chicken litter versus
19 cow manure versus sheep or whatever, so --

20 Q. Let's go on to the next form.

21 A. The next page?

22 Q. The next page is OK-PL-001034. Is this a form
23 that you used?

24 A. Yes.

25 Q. All right. And what was the purpose of this form?

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1 A. I want to say this is one that we started out with
2 initially. Let me take a little gander here real quick.

3 When we first started, when we were checking
4 just to see if the houses were working or not, we used the
5 third form that you have on there. And it was just a
6 general documentation where we were. So Page 2 that you're
7 referring to is just a little bit more in depth one. They
8 wanted us to do a little bit more than just saying yes,
9 it's working or it's not working. They wanted more detail,
10 how the -- why do we think it was working, why do we think
11 it wasn't working. So we would just check on these, you
12 know, that yes, it was or no, it wasn't.

13 Q. And then the final form in this package --

14 A. Uh-huh.

15 Q. -- it's Bates No. OK-PL-0005198, what was this
16 form used for?

17 A. Basically the same. If we -- with the video on
18 there, we could have used this for actual videoing a
19 spreading of litter. It could be just that, you know, we
20 came across a house or dead chicken on the road or roads
21 that would have litter marks pulling out of a farm. You
22 could see the road would be black for a while with litter
23 on the street. It was just a general form for whatever we
24 wanted to add to it.

25 Q. Back to the first page of Exhibit 2, how is it

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1 that you determined the poultry type such as broiler versus
2 layer or pullet?

3 A. It was usually on the sign. It would tell us.
4 You know, that said -- it would say broiler house or, you
5 know, it would just say -- that's the only way that I knew
6 it was from the signage.

7 Q. Did you receive any kind of instructions about the
8 different types of poultry that might be raised in
9 watershed?

10 A. No.

11 Q. And I understand that at the end of the day you
12 would turn these forms back in to Steve.

13 A. Well, yes. Most of the time it was Steve because
14 he went out -- every time I went out, Steve was there. I
15 would turn the -- it depended on where we let out at or
16 not. Sometimes Rod would take it all and give it back to
17 Steve Steele. But like I said, Rod was most of the time my
18 partner, Rod Hummel. And we would sign off on our records
19 on these documents here. We had cameras, we'd turn that
20 back over. And if we had a video camera, we'd turn that
21 back over. So we did not have any -- we didn't take
22 anything home.

23 Q. It looks like from my review of the documents you
24 were usually the record keeper.

25 A. Yes, I was.

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1 Q. Okay. Did you ever receive any feedback about
2 your notes or commentary?

3 A. No.

4 Q. Did you ever -- was it ever suggested to make any
5 adjustments in the way you were recording information?

6 A. No.

7 Q. When you went back to visit any of these locations
8 on multiple occasions, would you receive your prior notes
9 back as a guideline?

10 A. No. They gave us a sheet that would have -- it
11 would have the GPS coordinates on it and it would have,
12 like, the chicken house name on it, but they wanted us --
13 if they thought there was more activity there that was
14 suspicious or going overboard on anything, they want us to
15 review on it, they did give us that -- I can't remember
16 what it was called. It was just -- it was a list after
17 list after list. It was a full page and that's what we
18 would divide. Like, we'd take the top third. Some guys
19 can take the second third just to go visit these houses and
20 see if they're continuing the same activities or
21 discontinuing or if anything had changed.

22 Q. What suspicious activities were you investigating?

23 A. What I mean by that -- I might have said that from
24 my other profession. But what I mean by that is just --
25 just spreading or the doors open and seeing other livestock

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1 entering a chicken house, you know, just different things
2 that might look odd to us that they wanted us to go back
3 and check on that and see if that was just a one-time
4 happening or is that a common practice with that house.

5 Q. And when you were going back to locations, did I
6 understand correctly that you got a description or some
7 information about the activity that you were going back to
8 surveil?

9 A. Well, I think once -- once we finished Phase 1,
10 which was just getting the -- if the houses were working or
11 not working, that they compiled a list of all the working
12 houses. And that it -- gosh, it's so long ago. I remember
13 it had the GPS listings on it down one side and then it
14 would have who owned those houses on the other columns out.

15 Q. You received a master list of all of the working
16 houses?

17 A. The ones they wanted us to look at. I know there
18 was a master list of the ones they wanted us to see that
19 day and they would give us a section of it.

20 Q. Were there any other notes about particular
21 activities of interest to look at at a particular location?

22 A. No, we didn't receive any notes on that. That's
23 what we did. We made the notes for them. They just wanted
24 us to double-check these locations if you're referring to
25 that form I was talking about. All it was was just basic.

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1 It would say, like, Joe Blow and GPS coordinates of where
2 that house is. That's it. And they would just list after
3 list after list on that. It didn't have any specific notes
4 to say, you know, are they overspreading or do you see a
5 new cake or anything out there? It didn't tell us to do
6 that. We just always went back to these forms that we
7 documented on.

8 Q. Overspreading, is that a term that -- that they
9 told you about in your training?

10 A. The thing that they wanted us to look for -- they
11 said it's not illegal to use chicken litter for
12 fertilization in these fields and that was fine, but to
13 look for if someone would, like, continually circle and
14 circle and circle over the same tracks just dumping truck
15 after truck load of chicken litter, that they wanted
16 documentation on that. That they felt that that was
17 overspreading.

18 Q. Any other evidence of overspreading they told you
19 to look for?

20 A. No. That was really the one. They loved it when
21 we could get, you know, photographs of the ones that were
22 actually spreading in a certain area that we could document
23 that and that -- to show, you know, how much was coming
24 out. And if we stay there while they -- you know,
25 sometimes we'd sit there through the whole spreading to see

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1 how long they were actually on this plot of land because
2 sometimes it'd be -- you know, they may spread on one acre
3 and they may spread on 10 acres, 20 acres, 40 acres. You
4 know, if they just took one truckload over 40 acres, that
5 was a lot different than taking one truckload or more over
6 one acre. So we would sit and -- you know, so we stayed
7 here for 30 minutes or 45 minutes the whole time, you know,
8 Spreader Truck A was spreading here. Sometimes it'd be
9 more than one truck spreading at the same time on the same
10 lot.

11 Q. So you did receive feedback occasionally on the
12 information you entered on these forms? You said they
13 loved it when you got information about trucks supplying in
14 a certain area.

15 A. Well, basically, yeah. That's what they wanted.
16 If we would find something, they'd say that's what we want,
17 please. But that didn't come -- I mean, we didn't get like
18 a phone call from anybody other than Steve. You know, we
19 had -- we used our cell phones to talk to each other, the
20 teams that were out in the field at the time and said
21 that's -- you know, stay on that. That's what we want. So
22 I didn't receive any special instruction other than Steve
23 on what to do.

24 Q. How were you paid on this project?

25 A. Just by -- by check. I believe it's once a month.

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1 I don't even remember. It was so long ago.

2 Q. Were you paid on an hourly basis?

3 A. Yes.

4 Q. Were there any bonuses paid?

5 A. No.

6 Q. Did you make any oral reports to anyone on this
7 case?

8 A. No.

9 Q. Everything that you would have observed you wrote
10 down?

11 A. Yes, ma'am.

12 Q. Have you had any communications other than the
13 meeting in preparation for this deposition with attorneys
14 for the State of Oklahoma on this case?

15 A. No.

16 Q. How about the Attorney General's office?

17 A. No.

18 Q. And let me make sure I have a clear record. We
19 believe Bert Fisher was at the first training meeting and
20 may have been out in the field with you on as many as two
21 occasions or more?

22 A. A couple of times. I didn't really make notes of
23 when he came out or not. I thought he was just coming out
24 to see how things were going.

25 Q. So it could have been numerous times he just came

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1 by?

2 A. Yeah. But I know that I saw him at least twice.

3 Q. Were there any documents that were not provided to
4 Lithochimiea from your work on the project?

5 A. No. Everything was turned back to Steve.

6 Q. Did you meet any other scientists who were
7 involved in this project for the State of Oklahoma?

8 A. I'm sure I did. But if you're gonna ask me their
9 names, I don't -- I'm not a name person. I know there were
10 two or three at that first meeting. I don't know if they
11 were lawyers or if they were scientists. That wasn't --
12 you know, my deal was just to go out and be one of the
13 investigators.

14 Q. Did you meet others in the field other than
15 Dr. Fisher?

16 A. There was one time that a couple of men came out
17 to visit. They were only out there for maybe an hour with
18 us. We were looking at a waterway, I believe.

19 Q. What type of waterway were you looking at?

20 A. I want to say it was moving water, but it was a
21 creek. I know that we were on a bridge kind of watching,
22 looking at the water. It was very short-lived, though.

23 Q. And what was the purpose of this visit by the few
24 men?

25 A. I don't know. That they just wanted to show us.

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1 You know, they -- they would have different conversations
2 with Steve, my boss. I don't know what it was that they
3 were showing. Some algae growth on that one or not. I
4 don't know.

5 Q. You don't recall any additional instructions or
6 information --

7 A. No.

8 Q. -- that you gained from that meeting?

9 A. No.

10 Q. Can you determine the boundaries of the Illinois
11 River Watershed? Do you know where it's located?

12 A. Well, just with the maps that we had, where to --
13 where to go and how far out to go.

14 Q. Okay. And prior to your work on this project,
15 were you familiar with the boundaries of the Illinois River
16 Watershed?

17 A. No. I went there a couple times in college, but
18 that was -- not the watershed but the river. So that's
19 about as close as I got.

20 Q. Did you float the river a few times in college?

21 A. I did.

22 Q. Have you been to Lake Tenkiller?

23 A. Yes, I have.

24 Q. When was the last time you were at Lake Tenkiller?

25 A. It was in college, so it's been ten years.

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1 Q. Have you floated the river since college?

2 A. Yes, I did. Let's see, that's probably 2004,
3 2005.

4 Q. Is there a reason why you've not floated the river
5 since 2004, 2005?

6 A. Yes.

7 Q. And tell me, what is that?

8 A. Because after they told me everything that was in
9 it, I wasn't too keen about bathing in that, so I don't go
10 there anymore.

11 Q. What did they tell you was in the river?

12 A. Just all the pollution and, you know, just that
13 they're killing everything and that it's just really --
14 it's kind of turned me off to it.

15 Q. Prior to your work on this project, they told you
16 the pollution was killing everything in the river?

17 A. Yes.

18 Q. Did they give you any specifics about the nature
19 of the pollution?

20 A. Just the different chemicals that come from the
21 litter. I don't know which is what. That's not my forte.
22 But that too much is not a good thing in that issue and
23 that they just wanted to kind of get some better regulation
24 and showing that it's not being held within the right
25 boundaries of the application of litter and that it was

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1 going into the watershed that will eventually work its way
2 to our water supply.

3 Q. Do you understand there are regulations that apply
4 to the land application of poultry litter?

5 A. Yes.

6 Q. And do you know anything in particular about what
7 those regulations allow?

8 A. No, I don't know any specifics. Like I said
9 before, I know that they told that they were allowed to
10 spread so many pounds of litter per acre, but I don't know
11 the numbers. And that's why they just wanted us to see if
12 people were within that or without that.

13 Q. So in this first training meeting, you were
14 specifically told how many pounds per acre were allowed to
15 be applied on a field?

16 A. I believe so.

17 Q. And did you receive any instructions on how to
18 determine how many pounds per acre were being applied?

19 A. They said that a general litter truck -- I knew
20 you were gonna ask me about numbers -- would hold so many
21 pounds of litter and that that should go -- should -- if
22 they were applying it the way they were supposed to, that
23 it would cover a certain amount of land. Again, I can't
24 give you specifics on that. That's not what I was -- what
25 I was doing. So that's why they said if they spread more

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1 than one truckload in this area, that's something we want
2 to look at and, you know, see exactly how much land it is
3 being spread upon and if it fell within the regulations.

4 Q. Did you ever read the regulations about land
5 application of poultry litter?

6 A. No, I did not.

7 Q. And have you ever received any information or
8 instruction on how litter trucks are calibrated?

9 A. No, I have not.

10 Q. How about the different types of litter trucks
11 that may be used to land apply litter?

12 A. Other than the liquid application, what they look
13 like versus the dry litter spreading and then later on in
14 the investigation when they would haul it in the giant
15 semis, that's all I -- I had, but I couldn't tell how much
16 any of them weighed or how big they were.

17 Q. Did you ever review an animal waste management
18 plan?

19 A. No.

20 Q. Do you know what an animal waste management plan
21 is?

22 A. No.

23 Q. And you don't know the litter land application
24 standards that are provided for in any animal waste
25 management plan in Oklahoma?

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1 A. No, I do not.

2 Q. Have you observed any grower or anyone doing any
3 testing of soil or litter?

4 A. No, I have not.

5 Q. Do you know the requirements under Oklahoma law to
6 test soil or litter?

7 A. Do I know them?

8 Q. Do you know what they are?

9 A. No, I do not.

10 Q. All right. How about Arkansas law, have you
11 received any specific training about Arkansas laws relating
12 to the land application of poultry litter?

13 A. No.

14 Q. Have you ever received -- reviewed a nutrient
15 management plan?

16 A. No.

17 Q. Do you know what a nutrient management plain is?

18 A. No.

19 Q. And do you know what the litter land application
20 standards are in Arkansas?

21 A. No, I do not.

22 Q. And do you know what the requirements are in
23 Arkansas to do field testing of soil?

24 A. No, I don't.

25 Q. And do you know what those requirements are in

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1 Arkansas to test litter?

2 A. No, I do not.

3 Q. Have you had any training in the movement of any
4 of these chemicals or other constituents that may be
5 contained in litter?

6 A. No.

7 Q. It's referred to as fate and transport. Have you
8 ever heard that issue before?

9 A. No, I have not.

10 Q. Have you had any training in the way phosphorous
11 may act or react in soil or water?

12 A. No, I have not.

13 Q. Have you had any training about phosphates versus
14 phosphorous generally?

15 A. No.

16 Q. Has anyone ever told you that phosphorous is a
17 hazardous substance?

18 A. Yes.

19 Q. Who told you that phosphorous was hazardous?

20 A. The guys at Lithochimiea said that -- I'm sorry.

21 Q. Go ahead.

22 A. I was gonna say just -- like I said, too much is
23 not always a good thing.

24 Q. Did you receive any training similar to your
25 Hazmat training with the Tulsa Police Department in

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1 preparation for your work on this project?

2 A. No.

3 Q. Did you ever use any Hazmat gear on this project?

4 A. No. I think a dead chicken was picked up once and
5 somebody threw on some rubber gloves. Other than that, no.

6 Q. Did -- I understand that if poultry litter fell
7 onto the road, samples may have been picked up. Were you
8 ever involved in that?

9 A. I did not pick up any, no.

10 Q. So did anyone out in the field at any time put on
11 any gear to -- gear that would be used for dealing with
12 hazardous substances?

13 A. Not that I was witness to.

14 Q. In your prior Hazmat training, did you have any --
15 any instruction about phosphorous?

16 A. No.

17 Q. And you do not know the difference between
18 phosphorous and phosphates; is that correct?

19 A. That's correct.

20 Q. But you believe that Bert Fisher told you that
21 phosphorous is hazardous?

22 A. In abundance, yes.

23 Q. Did he give you any instructions to take any
24 special precautions when being around these operations?

25 A. No. We never went on the properties. We were on

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1 public access. No.

2 Q. And in training for determining whether there was
3 over-application or not, did you receive any instruction
4 about agronomic rates?

5 A. No.

6 Q. Okay. How about different types of crops that
7 might be grown in fields, did you receive any instruction
8 about observing different types of crops?

9 A. Not that I recall, no.

10 Q. Are you aware that there are different kinds of
11 grasses in -- that are grown in the watershed?

12 A. Oh, I'm sure.

13 Q. Uh-huh. And are you aware that these grasses have
14 different colors, depending on the time of year?

15 A. Just generally, yes. But I did not have any
16 training on that.

17 Q. And did you make notes whether, you know, these
18 were Bermuda grasses or fescue grasses?

19 A. I didn't because I don't know if I could tell
20 which leaf was which, so --

21 Q. You don't believe you could tell whether it's a
22 fescue or a Bermuda grass?

23 A. No.

24 Q. Do you understand that one of these grasses might
25 be yellow at the same time that another one is green --

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1 A. Yes.

2 Q. -- in the same season?

3 A. Yes.

4 Q. So you're not an expert in distinguishing grass
5 types?

6 A. I am not.

7 Q. And prior to this, you've never been involved in
8 any environmental sampling?

9 A. No, ma'am.

10 Q. Okay. And did you receive any training on this
11 project on decontamination procedures?

12 A. Later on in the process -- I don't know what stage
13 we were in -- they wanted us to look for if a truck were to
14 enter a chicken house property, a secured farm, that they
15 had to have their wheels sanitized. If we witness anybody
16 like spraying the wheels or, you know, washing down the
17 truck when they -- before they -- as they came in or before
18 they left so they're not transporting.

19 They said that something that was real
20 dangerous to chicken growers was disease from one house
21 that might be transported to another house from transport
22 vehicles or any vehicle or anybody that's in there. So
23 they just told us to make extra notes if we notice that,
24 but that was later on closer to the end of my service for
25 them.

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1 Q. I was actually asking whether your teams ever
2 engaged in any decontamination procedures yourself.

3 A. No, we did not.

4 Q. Okay. So you didn't do anything to especially
5 wash off the trucks that you took out in the watershed?

6 A. No.

7 Q. And as far as your person, there were no special
8 procedures that you took to wash at the end of the day?

9 A. No, we did not.

10 Q. When did you start your work on this project?

11 A. I believe it was early April of 2005. I don't
12 know the exact date. I believe that was the first meeting
13 was in April and we probably started the next week going
14 out.

15 Q. Do you know whether the lawsuit had been filed at
16 that time?

17 A. No, I don't know.

18 Q. Do you know when the lawsuit was filed?

19 A. No, I do not.

20 Q. Did you receive any information about the lawsuit?

21 A. No.

22 Q. Have you done any other research about the
23 lawsuit?

24 A. No, I have not.

25 Q. Have you read anything about the lawsuit?

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1 A. No.

2 Q. Do you read the paper?

3 A. I do not.

4 Q. When did your work on this project end?

5 A. I believe I started in April of 2005 and I went
6 through 2006. I don't remember how long in '06. By
7 looking at what I made, I'm thinking maybe through June
8 2006. I'm not sure.

9 Q. Okay. So you did not do any work in 2007 or 2008?

10 A. No.

11 Q. What was the total amount of money that you did
12 make on this project?

13 A. In 2005, I made \$8,029. In 2006, I made \$5,495.

14 Q. Do you have an estimate of the total number of
15 days that you worked on this project?

16 A. I have no idea. We made \$27 an hour, so -- I
17 don't know. Some of our days were 16 hours, some were
18 shorter. I would work -- I tried to work two days a week
19 when it first started. Then we had a lull in activity over
20 the winter of 2005, early '06, and then did some work in
21 the spring. So I can't -- I can tell you that I was not
22 one that worked -- worked it as much as others.

23 Q. Did you always go without Rod Hummel?

24 A. For the most part. I went out with Steve Steele a
25 couple of times and I was also out with Shane Tuell on one

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1 occasion. I believe that's the only partners I traded
2 with.

3 Q. And I know that Steve and Rod were out there quite
4 often. Was Mr. Tuell one of the primary persons who went
5 out quite often as well?

6 A. He went out about as much as I did. It was harder
7 for us to get off, have the time to go do it than others.

8 Q. And you always went out in two-person teams; is
9 that correct?

10 A. I did, yes.

11 Q. How were the locations selected that you would be
12 observing on a certain day?

13 A. I don't know if there was anything specific to it.
14 It was just, you know, what areas that we felt more
15 familiar with. And we just would go hit the same ones over
16 and over. So I don't think there was any specific
17 assignment that I need you to do this one and this one.
18 We'd just -- we have to get these done. What area do you
19 want? That's basically how it got divvied out.

20 Q. When you were out in the field, did you make any
21 individual decisions about where to go or what to see?

22 A. No. Not particularly, no.

23 Q. So everything you did out there was based on an
24 instruction that you received that came through Steve
25 Steele?

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1 A. Yeah. Just to check these certain addresses, no
2 particular time or, you know, it had to hit this day but we
3 need to get these documented on what's going on.

4 Q. Were there any group meetings about the
5 observations you were making out in the field or record
6 keeping or anything else about the project after you
7 started?

8 A. No. I mean, we would go and turn in our
9 notebooks. Sometimes that was all of us together.
10 Sometimes like, you know, Rob would drop me back off at my
11 car and he'd take everything to Steve. So it was nothing
12 really formal about it on my part. I mean, I don't know if
13 they had meetings or not.

14 Q. I understand that some persons were involved in
15 one interview with a contract grower who maybe wasn't
16 located in the watershed. Were you involved with that
17 interview at all?

18 A. I don't think so. Does it give more detail? I
19 didn't talk to any growers, if that's what you're asking.

20 Q. Yes.

21 A. No, I did not.

22 Q. And you weren't there when someone else talked to
23 a grower?

24 A. No.

25 Q. Okay. Did you knock on any doors and serve any

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1 subpoena?

2 A. I did not.

3 Q. Did you talk to anyone who was not a grower?

4 A. There was one instance. I believe I was riding
5 with Shane Tuell, and I can't remember why we pulled over,
6 but somebody came out and asked us what we were doing and
7 we told him. He actually lived on the waterway of the
8 Illinois.

9 Q. The main river itself?

10 A. Yes.

11 Q. And who is he, the person you were speaking with?

12 A. It was just a guy that lived -- had a house that
13 was real close to the water and he spoke with me and Shane
14 just briefly, you know.

15 Q. When you pulled over --

16 A. I don't remember any specifics of that
17 conversation. We did tell him what we were doing because
18 he was wanting to know why we were pulled over close to his
19 property, just like anybody else would. I would want to
20 know why people were around my property taking pictures and
21 documenting things.

22 Q. Yeah. That would make you a little nervous,
23 taking pictures and notes, watching the property.

24 Did you tell this gentleman that you were
25 working for the State of Oklahoma?

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1 A. No.

2 Q. Did you have instructions not to tell them that
3 you were working for the State of Oklahoma?

4 A. No.

5 Q. Did you tell him that you were working for anyone
6 involved with this lawsuit?

7 A. No.

8 Q. What did you tell him, then? How did you identify
9 yourself?

10 A. Basically the conversation was really between
11 Shane Tuell and this man. And what I recall is that we
12 just said that we were investigating pollution of the
13 Illinois River and just taking photographs of that. We
14 didn't give details of who we worked for or what we were
15 doing or anything of that nature.

16 Q. That was enough information to satisfy his
17 curiosity?

18 A. Yes.

19 Q. Did he ask you to leave his -- leave the access
20 near his property?

21 A. No.

22 Q. When you're observing land application, I
23 understand you didn't do any tests to determine the nature
24 of the litter being applied.

25 A. No.

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1 Q. You had no way of measuring the rate of
2 application?

3 A. No.

4 Q. Do you have any information about the different
5 types of poultry litter that might be used?

6 A. No. Other than wet and dry, that's all I know
7 about.

8 Q. Did you actually do any measurements of distance
9 from land application to moving water bodies?

10 A. No.

11 Q. Did you make some estimates?

12 A. We would make visual estimates, not to -- if we
13 could see the waterway, then yes, but, you know, we didn't
14 drive to say this was half a mile or a mile away from a
15 water area, but we would measure how far -- not measure,
16 but visually estimate how far something was from public
17 access and that was not on all occasions.

18 Q. How did you determine whether to make those notes
19 or not?

20 A. If it looked like there was a lot of spreading
21 going on in a small area, we would just really make sure
22 that our notes were as filled out as completely as we
23 possibly could.

24 Q. I'm a little confused about how you determined
25 lots of spreading in a small area. If you couldn't

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1 determine -- you could not determine the rate of
2 application and the amount of litter being applied;
3 correct?

4 A. Well, I don't know the numbers of how much to
5 spread here and there, but, you know, they told us if they
6 have more than one truck or the same truck keeps going to
7 the same area on a number of times and spreading the same
8 area, that that is something to -- to document and that
9 they wanted to look at that further. But I did not
10 measure, you know, how much was actually being spread at
11 that point.

12 Q. So if you saw a truck going to the -- a similar
13 area time and time again, you might make a notation about
14 water. Is that your testimony?

15 A. No. That we would make notation that it had been
16 applied. For instance, if it had been applied twice that
17 day already or if it was applied last week and this week on
18 the same -- in the same area, the same block of land that
19 we had already marked, that we would say that it's already
20 been applied once and now it's twice, three, four, whatever
21 time it was. I did not make any notation around water
22 unless we were -- like I said, further on in the
23 investigation when we would come across a waterway that
24 might have excessive algae or color change to it, that's
25 when we'd document the water, that I was a part of.

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1 Q. And do you have any training in botany?

2 A. No, I do not.

3 Q. Any training in chemistry?

4 A. No.

5 Q. Water chemistry?

6 A. No.

7 Q. Did you take any water samples?

8 A. No, I did not.

9 Q. Did you receive any instruction on different types
10 of water plants?

11 A. No.

12 Q. And how is it that you determined whether there
13 was algae or not in a certain body of water?

14 A. Just the color of it -- color of it and how it
15 would overtake a pond or a waterway of how just the green
16 thickness, moss and algae.

17 Q. The green thickness, is this something you
18 observed mostly in ponds?

19 A. Yes.

20 Q. Were you asked to evaluate any other features of
21 the land around those ponds or water -- other water bodies?

22 A. Only maybe like the terrain. If it was -- if the
23 pond was at the bottom of a hill or if it was on a flat
24 terrain, we would make note of that and we would document
25 with pictures.

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1 Q. Did you do any measurements to determine slope?

2 A. No.

3 Q. Did you do anything to determine the amount or
4 type of soil that was located in the area of your
5 observation?

6 A. No.

7 Q. Did you do anything to evaluate the geology of the
8 land involved?

9 A. No.

10 Q. Did you observe anyone taking any samples at the
11 edge of these fields --

12 A. No.

13 Q. -- you observed?

14 So you didn't do anything to establish
15 whether there was any runoff occurring from these fields
16 you observed?

17 A. I did not, no.

18 Q. Did you observe and note transportation of hay in
19 and out of the Illinois River Watershed?

20 A. I don't recall that.

21 Q. Did you attempt to make any determination about
22 the amount of cattle that were located in the Illinois
23 River Watershed?

24 A. The only time that I remember documenting any
25 cattle or any other kind of livestock other than poultry

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1 was if it was mixed, if there were cows on the -- near the
2 chicken house. And there was one chicken house we watched
3 goats walk in and out that they were working chickens on,
4 you know, so -- that was the only time that I documented
5 anything about livestock. If they were spreading and there
6 were cows in the field at the time they were spreading, we
7 would document that, that there were cattle grazing at the
8 time of litter application.

9 Q. Were you told that that was improper or a
10 violation?

11 A. No. We just -- they just told us to document
12 anything that was going on while they were spreading,
13 anything that was out there. They did say if there were
14 other livestock, just to make note of that.

15 Q. Did you receive any other instructions about
16 livestock and documenting livestock in the Watershed?

17 A. No.

18 Q. So the only instruction that you received was
19 document livestock if they're present during land
20 application activities?

21 A. And if they were near the working chicken houses.

22 Q. The other rule of depositions I forgot to tell you
23 is you're the master of how long we go and you may take a
24 break at any time.

25 A. Okay.

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1 Q. The court reporter let's me know that our video's
2 over so we're going to take a quick break.

3 A. Okay.

4 THE VIDEOGRAPHER: We're off the record at
5 2:19 p.m.

6 (Break was taken from 2:19 p.m. to 2:30 p.m.)

7 THE VIDEOGRAPHER: This is the beginning of
8 Tape No. 2. We're back on the record at 2:30 p.m.

9 Q. (BY MS. HILL) Ms. Weatherly, when you were out in
10 the field, did you attempt to observe and document any
11 instances of stream bank erosion?

12 A. No.

13 Q. Did you attempt to observe and document any
14 instances of cattle being in water?

15 A. No.

16 Q. Did you attempt to observe and document any
17 instances of recreational use of the watershed or the
18 river?

19 A. We saw some, but we didn't particularly document.

20 Q. That's not something that you documented?

21 A. Huh-uh.

22 Q. But it is something that you saw?

23 A. Yes.

24 Q. Did you attempt to observe and document anything
25 about any septic systems used by the owners of property in

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1 the Illinois River Watershed?

2 A. No.

3 Q. Did you observe any waste water treatment
4 facilities?

5 A. No.

6 Q. Did you attempt to observe and document any
7 instances of use of commercial fertilizer?

8 A. Not that I saw, no.

9 Q. Did you attempt to document and observe use of any
10 type of fertilizer other than poultry litter?

11 A. No.

12 Q. Did you attempt to observe and document any kinds
13 of construction activities?

14 A. If new houses were being put up, we would document
15 that. There was a tornado that went through and took out
16 some houses and documented that they were down and then
17 they rebuilt some houses. We did document that.

18 Q. How about construction in urban areas?

19 A. Like housing additions and things? I mean, we saw
20 it, but we didn't particularly document it.

21 Q. You made no -- no observations about construction
22 activities --

23 A. No.

24 Q. -- other than those related with --

25 A. My job was directly to the chicken houses. I

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1 didn't look for anything else than that.

2 Q. All right. I'm gonna hand you what the court
3 reporter has marked as Exhibit No. 3. Please take a moment
4 to look at this field note and the pictures associated with
5 that note.

6 Were you involved in this observation?

7 A. Yes.

8 Q. Did you make the notes on this observation?

9 A. I did.

10 Q. Do you have any independent recollection of this
11 observation?

12 A. No. They all look alike. What do you want to
13 know?

14 Q. If you have any independent recollection of
15 anything occurring at this place, other than what's
16 reflected on the paper here.

17 A. Well, other than what's on the document, nothing
18 stands out to me.

19 Q. Take a look at the third picture, which is
20 OK-PL-0009581.

21 A. Okay.

22 Q. I believe that on the first page your note for
23 this picture says silos and walkway joining houses.

24 A. Yes.

25 Q. And the picture, I believe, is of that walkway.

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1 A. Uh-huh.

2 Q. Do you know what that walkway is used for?

3 A. No, I do not.

4 Q. Do you have any information or training about
5 turkey growing operations and whether they're one-stage or
6 two-stage operations?

7 A. No, I do not.

8 Q. Have you ever heard the term brood house?

9 A. I've heard it. I'm not sure I know what it is,
10 though.

11 Q. And you didn't receive any training on brood
12 houses versus grow-out houses?

13 A. No.

14 Q. So you can't determine whether litter was coming
15 from a brood house or a grow-out house?

16 A. No, I cannot.

17 Q. And looking at this note and these pictures here,
18 is there anything in these notes that would indicate any
19 type of violation that you were asked to look for?

20 MR. WILKERSON: Object to form.

21 Q. (BY MS. HILL) You may answer.

22 A. No.

23 Q. I'm gonna hand you a number of documents as we go
24 through here. I'm gonna ask you the same sorts of
25 questions about whether you were involved and recall

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1 anything else. There may be some particular -- particular
2 questions about these documents, so --

3 A. Are we done with these?

4 Q. We're done with Exhibit 3. And this will be
5 Exhibit 4. I should have stapled them.

6 (Exhibit No. 4 was marked.)

7 Take a few minutes to look at these notes and
8 let me know when you're ready.

9 A. Okay.

10 Q. And your name is on the first page, so you're
11 involved in this observation?

12 A. Yes, ma'am.

13 Q. And did you make the notes on this observation?

14 A. Yes, I did.

15 Q. Do you have any independent recollection of this
16 observation, sitting here today, other than what's
17 reflected in the notes and pictures?

18 A. No.

19 Q. Can you tell me what that first note is under
20 notes?

21 A. Open chicken or turkey litter piles adjacent to a
22 garden. There are feathers in the yard and in the garden
23 and documented Picture No. 2668 and 69.

24 Q. And did you do anything to determine whether --
25 where this chicken litter or turkey litter came from?

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1 A. No. Just documented where it was.

2 Q. You did nothing to determine the source of this
3 poultry litter?

4 A. That's correct.

5 Q. Did you determine what this litter was being used
6 for?

7 A. No.

8 Q. Do you know how long that this pile of material
9 was located at this particular place?

10 A. No, I do not.

11 Q. How long did you make -- were you there when you
12 made this observation?

13 A. It's only documented what time I took the notes.
14 I don't know how long we were at the location.

15 Q. Did you do anything to determine whether this was
16 chicken or turkey litter?

17 A. No.

18 Q. Did you do anything to determine whether this was
19 litter from a brood house or grow-out house?

20 A. No.

21 Q. And again, you have never reviewed any animal
22 waste management plans that might allow for the application
23 of this litter?

24 A. That's correct.

25 Q. Is this anything that you believe is improper

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1 based on the information you received in your first
2 meeting?

3 MR. WILKERSON: Object to form.

4 You can answer.

5 A. From the pictures, we were told to look for open
6 litter piles as documented here by the photographs. And
7 with it being right next to what appears to be a corn field
8 or garden, we thought that needed to be documented and that
9 may be too much fertilizer for food that may be consumed.

10 Q. (BY MS. HILL) You believe that this pile of
11 material next to -- next to this garden might be too much.
12 Is this a large pile?

13 A. Well, it's -- it's a pile. I don't know. You
14 know, we didn't have -- it's not the largest that I've
15 seen, if that's what you're asking, but it's predominant.

16 Q. Other than your notes here, did you make any other
17 report to anyone else about the litter located next to this
18 -- this garden?

19 A. Other than our team, no.

20 Q. And did anyone tell you that it was improper to
21 use litter for crops that were used for human consumption?

22 A. No.

23 Q. Is that a belief that you have that litter might
24 be improper for crops that are going to be consumed by
25 humans?

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1 A. No. What our concern was is how much. I don't
2 know by looking at this picture if that's too much, too
3 little or just right. I don't -- that's not what my
4 expertise was on it. All I was to do is to document
5 pictures of this and this was out by a garden, uncovered
6 litter. So that's what I did was just document the farm
7 that it was at and the location next to the growth. It is
8 not my belief that chicken litter is a bad fertilizer for
9 food to be consumed. The amount that is used is what
10 concerns me.

11 Q. And again, you don't have any training in what --
12 what the proper amount may or may not be?

13 A. That's correct.

14 Q. So you're not going to be giving us any opinions
15 at the trial of this matter about too much or too little
16 litter for land application?

17 A. That's correct.

18 Q. All right. Let's go on to the next exhibit.

19 (Exhibit No. 5 was marked.)

20 Yeah, it's 5.

21 I hand you Exhibit No. 5. Take a few moments
22 to look at that note and picture and let me know when
23 you've finished.

24 A. Okay.

25 Q. And were you involved in taking this observation?

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1 A. Yes.

2 Q. Did you make the notes on this observation?

3 A. I did.

4 Q. And did you return to this location after this
5 observation was made?

6 A. I don't know. I'd have to look at other notes
7 showing that we went back to the same place.

8 Q. If you returned to this location at another time
9 or place, that would be documented in the notes?

10 A. That's correct.

11 Q. Do you know what happened to this material out in
12 front of the house that you documented litter?

13 A. No. We did not follow this one.

14 Q. Okay. Did you -- do you have any independent
15 recollection of this observation other than the notes and
16 pictures contained here?

17 A. No.

18 Q. Did you see this tractor actively moving the
19 litter that is located in front of that house?

20 A. No.

21 Q. Do you know whether this was a clean-out or a
22 cake-out?

23 A. I don't know.

24 Q. And do you know whether this was a grow-out house
25 or a brood house?

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1 A. No.

2 Q. Okay. No further questions about that one. This
3 will be Exhibit No. 6. You know, I have some stapled ones
4 of this one.

5 (Exhibit No. 6 was marked.)

6 I hand you what the court reporter has marked
7 as Exhibit No. 6. There you go. I don't know how I ended
8 up with many of these. Take a look at that and let me know
9 when.

10 (Off-the-record discussion.)

11 Q. Are you ready?

12 A. Yes.

13 Q. Were you involved in this observation?

14 A. Yes.

15 Q. Did you make the notes on this observation?

16 A. Yes.

17 Q. Can you tell me what black litter is?

18 A. It appears that it's what's left after it was
19 scraped off. It was in the shape of a chicken or turkey
20 house and it just appeared that there was black litter
21 still on the ground when they removed the house.

22 Q. How do you distinguish black litter from other
23 types of litter?

24 A. All that simply is is just denoting the color of
25 the litter at the time that we see it, if it's light brown,

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1 if there's feathers in it, if it's dark.

2 Q. How is it that you determined this was actually
3 litter?

4 A. It's what appeared to us to be litter. That's
5 what the notes say. I don't know for sure that it is
6 litter.

7 Q. And again, you did not do any testing to determine
8 whether it was litter or not?

9 A. That's correct.

10 Q. I'm going to hand you what the court reporter is
11 going to mark as Exhibit No. 7.

12 (Exhibit No. 7 was marked.)

13 Take a few minutes to take a look at this
14 note and pictures and let me know when you're ready.

15 Were you involved in this observation?

16 A. I was.

17 Q. Did you take the notes on this observation?

18 A. I did.

19 Q. Do you have any independent recollection of this
20 observation other than the notes that are contained here?

21 A. No, I do not.

22 Q. Are there any -- any violations that you note on
23 this observation?

24 MR. WILKERSON: Object to form.

25 You can answer.

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1 A. No.

2 Q. (BY MS. HILL) Anything improper or unusual that
3 you note on this form?

4 MR. WILKERSON: Object as to the form as
5 improper.

6 You can answer.

7 A. No, I don't see anything on this one.

8 Q. (BY MS. HILL) And on the fourth picture where the
9 turkeys are smiling at you --

10 A. Yes.

11 Q. -- they look pretty interested and happy there,
12 don't they?

13 A. They do.

14 Q. And --

15 A. As noted.

16 Q. In this instance, you were close enough to this
17 location to see the poultry that was -- was in the house?

18 A. Yes.

19 Q. I believe on the prior exhibit I may not have
20 asked you whether you had any independent recollection
21 other than, you know, the notes that were there. On any of
22 the things that we've looked at thus far, is there anything
23 you remember other than what the notes and pictures depict?

24 A. No.

25 Q. This will be Exhibit No. 8.

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1 (Exhibit No. 8 was marked.)

2 I'm gonna hand you what the court reporter
3 has marked as Exhibit No. 8. I'm gonna represent to you
4 those are a compilation of exhibits that we found your name
5 on as well as location or a farm that may have been
6 associated with Cargill.

7 A. Okay.

8 Q. I'm gonna go through these rather quickly and ask
9 you the same types of questions individually on each about
10 whether you were involved and whether you have any
11 independent recollection of -- of this observation other
12 than what's noted here. So take a look at them and then we
13 can start page by page when you're ready.

14 A. Okay.

15 Q. Page 1 of Exhibit No. 8 is OK-PL-0001928. Were
16 you involved in this observation?

17 A. Yes.

18 Q. Did you make the notes on this observation?

19 A. Yes.

20 Q. Do you have any independent recollection of this
21 observation?

22 A. No.

23 Q. Was this just a routine observation to determine
24 whether this was an active operation or not?

25 A. That is correct.

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1 Q. Nothing unusual noted on this form?

2 A. Not on this one.

3 Q. Let's turn to the next page, OK-PL-0002487. Were
4 you involved in this observation?

5 A. Yes.

6 Q. And is this your handwriting on these notes?

7 A. Yes.

8 Q. And do you have any independent recollection of
9 this observation other than the notes here?

10 A. No.

11 Q. And was this again just a routine observation to
12 determine whether this operation was active or not?

13 A. Yes.

14 Q. Nothing unusual noted on this form?

15 A. No.

16 Q. Let's go on to the next form, OK-PL-0002870. And
17 were you involved in this observation?

18 A. Yes.

19 Q. And did you make the notes on this observation?

20 A. Yes.

21 Q. Do you have any independent recollection of this
22 observation?

23 A. No.

24 Q. And again, was this part of the assignment to
25 determine whether these were active houses or not?

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1 A. Yes.

2 Q. And was there anything unusual noted on this form?

3 A. No.

4 Q. Okay. Okay. Let's go to the next form, which is
5 OK-PL-0002996. And were you involved in this observation?

6 A. Yes.

7 Q. And did you make the recordings on this
8 observation?

9 A. I did.

10 Q. Do you have any independent recollection of
11 Cargill Breeder Farm No. 1?

12 A. No.

13 Q. And you weren't able to make any observations from
14 the public access point; is that correct?

15 A. That's correct. We weren't.

16 Q. Let's take a look at the next form. It's
17 OK-PL-0003345. And were you involved in this observation?

18 A. Yes.

19 Q. Did you make the notes on this observation?

20 A. Yes.

21 Q. What do the notes say there?

22 A. Gone.

23 Q. So you've determined that there was not an active
24 operation at this location?

25 A. That's correct.

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1 Q. Your partner couldn't read your writing on that
2 one so I had to ask you.

3 A. Okay.

4 Q. OK-PL-0003357, were you involved in this
5 observation?

6 A. Yes.

7 Q. And did you make the recording of this observation
8 on this page here?

9 A. I did.

10 Q. And again, was this part of the project to
11 determine whether this operation was active or not?

12 A. Yes.

13 Q. Anything unusual noted on this observation?

14 A. No.

15 Q. Page OK-PL-0003425, were you involved in this
16 observation?

17 A. Yes.

18 Q. And did you make the recording on this
19 observation?

20 A. Yes.

21 Q. Do you have any independent recollection of this
22 observation?

23 A. No.

24 Q. And anything unusual noted about this observation?

25 A. This one says there's a little bit of roof damage,

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1 but for the most part, was in good condition and that it
2 appeared operational. So other than that, no.

3 Q. Go on to the next form, which is OK-PL--003823.
4 And were you involved in this observation?

5 A. Yes.

6 Q. Did you make the notes on this observation?

7 A. I did.

8 Q. And the purpose of this observation was to
9 determine whether this farm was operational or not?

10 A. Yes.

11 Q. And what did you conclude?

12 A. Appears operational.

13 Q. And is there any other notations there?

14 A. Yes. That it had a Honeysuckle sign and that the
15 curtains were up and it had silos.

16 Q. Okay. Let's go to the next form, OK-PL-0003835.
17 Were you involved in this observation?

18 A. Yes.

19 Q. And you took the notes on this observation?

20 A. I did.

21 Q. And was this observation made for the purpose of
22 determining whether this farm was operational or not?

23 A. Yes.

24 Q. Anything unusual noted in this observation?

25 A. No.

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1 Q. The next form is OK-PL-0003854. Were you involved
2 in this observation?

3 A. Yes.

4 Q. And did you make the notes on this observation?

5 A. Yes.

6 Q. Do you have any independent recollection of the
7 Fendal farm?

8 A. No, I do not.

9 Q. And was this observation made to determine whether
10 the -- this operation was active or not?

11 A. Yes.

12 Q. Anything unusual noted in the notes here?

13 A. No.

14 Q. The next form is OK-PL-0003856. Were you involved
15 in this observation?

16 A. Yes.

17 Q. Did you take the notes on this observation?

18 A. Yes.

19 Q. And was this observation for the purpose of
20 determining whether this operation was active or not?

21 A. Yes.

22 Q. And anything unusual noted in this observation?

23 A. No.

24 Q. Do you have any independent recollection of the
25 Carol Wallace farm?

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1 A. No, I do not.

2 Q. This is form OK-PL-0003862. Were you involved in
3 this observation?

4 A. Yes.

5 Q. And you made the notes on this observation?

6 A. Yes, I did.

7 Q. Do you recall -- have any independent recollection
8 of this Fendal farm?

9 A. No, I do not.

10 Q. Do you know whether this is the same Fendal farm
11 as the prior note where we looked at Fendal? I'll have to
12 find the Bates number. It was two before OK-PL-0003854.

13 A. They could have been adjoining. The time -- the
14 date and time show that they're pretty close and also their
15 GPS is close, so it may be like adjacent farms. I don't
16 know.

17 Q. Do you know --

18 A. It has the same name on it.

19 Q. -- if this is an instance where you observed the
20 name or would you been given the name of the farm
21 beforehand?

22 A. On these, I believe this is where we went through
23 and wrote down what we saw, what type of farm it was, if we
24 could determine that it had the individual name or a
25 mailbox and an address. I think this was our beginning

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1 parts. And especially with the date in 2005, we were still
2 working on that intel.

3 Q. Nothing unusual noted on this note on the Fendal
4 farm?

5 A. No.

6 Q. The last pages, OK-PL-0005008, does this look like
7 your handwriting?

8 A. Yes, it is.

9 Q. All right. What was the purpose of taking this
10 handwritten note?

11 A. It was probably before they gave us these
12 handy-dandy little forms to check out and make it easier on
13 us.

14 Q. At the bottom note, it looks like you observed a
15 Honeysuckle turkey farm.

16 A. Uh-huh, yes.

17 Q. Do you have any independent observation -- any
18 independent recollection of this observation other than the
19 notes that are there?

20 A. No, I do not.

21 Q. The spreader loaded and rolling, was that
22 something that you were asked to look for and document?

23 A. Yes.

24 Q. Okay. On all of these observations that we looked
25 at here in Exhibit 8, on some of them I asked you and some

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1 I did not. So for purposes of the record, do you have any
2 independent recollection of any of these observations other
3 than what is contained in the note?

4 A. No, I do not.

5 Q. Do you have any independent recollection of any
6 activity of a grower who grew turkeys for Cargill or
7 Honeysuckle White?

8 A. No, I do not.

9 Q. Do you have any independent recollection of any
10 turkey growers?

11 A. No, I do not.

12 Q. Do you have any independent knowledge of -- of
13 Cargill, Inc. or any of their employees?

14 A. No, I do not.

15 Q. Have you ever spoken to anyone from Cargill?

16 A. No, I have not.

17 Q. Before we mark this as an exhibit, I want you just
18 to take a look at it and let me know if that's your
19 handwriting or if you know what that form is.

20 A. That is not my handwriting.

21 Q. Okay. Let's mark this as Exhibit No. 9.

22 (Exhibit No. 9 was marked.)

23 I'm gonna hand you what is now marked as
24 Exhibit No. 9. At the bottom of this form, there's a
25 notation that all of the above is true and accurate to the

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1 best of my knowledge. Is that something that you commonly
2 wrote on your recordings?

3 A. Yes.

4 Q. Were you instructed to write this on your
5 recordings?

6 A. Yes.

7 Q. And if this was not written on one of your forms,
8 does that make it any less true or accurate?

9 A. It does not.

10 Q. Who told you to put this statement on all of your
11 forms?

12 A. Steve Steele.

13 Q. Did you receive any training or instruction on
14 what disposal is?

15 A. No.

16 Q. So did you make any determination whether litter
17 was being -- was going to be used at a particular location
18 or how it was to be used?

19 A. Okay. Say that again.

20 Q. Was it part of your -- part of your task to
21 document how litter was going to be used by -- by a farmer?

22 A. No.

23 Q. In some of these pictures, it looked like you were
24 pretty close to -- to poultry operations. Did anyone ever
25 tell you that you should suit up in Hazmat gear if you got

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1 too close?

2 A. No.

3 Q. Is that something that you would have expected to
4 be told if there was any harm or risk or danger?

5 A. I was never under the impression that there was
6 any danger to us at all.

7 Q. And you believe that if there would have been, you
8 would have been told about it?

9 A. Yes.

10 Q. And that's what you would expect?

11 A. Yes.

12 Q. Based on your personal knowledge, did you perceive
13 anything out there that you believe was a violation of law?

14 MR. WILKERSON: Object to form.

15 A. Only the large piles that we came across and what
16 appeared to be excessive spreading.

17 Q. (BY MS. HILL) But, again, you did not do any tests
18 of litter, you didn't make any measurements?

19 A. That's correct.

20 Q. You didn't measure any fields?

21 A. That's correct.

22 Q. You didn't look at any animal waste management
23 plans?

24 A. No.

25 Q. If you were investigating suspected criminal

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1 activity in your job, is it important to interview
2 witnesses or potential suspects?

3 A. Yes.

4 Q. And also to collect physical evidence?

5 A. Yes.

6 Q. So this -- this investigation is different than
7 the types of investigation you do in your field in your
8 career?

9 A. This was not a police investigation.

10 Q. And it was not conducted like a police
11 investigation?

12 A. That's correct.

13 Q. Because in a police investigation you would be
14 permitted to -- to take interviews; is that correct?

15 A. That's correct.

16 Q. And take evidence?

17 A. That's correct.

18 Q. And those are necessary things to do to determine
19 whether a crime has occurred?

20 A. That's correct.

21 MS. HILL: I have no further questions. I'll
22 pass the witness.

23 EXAMINATION

24 BY MS. LLOYD:

25 Q. You mentioned observing liquid spreaders. Did you

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1 visually observe what was in those trucks?

2 A. What was inside the trucks?

3 Q. Yeah.

4 A. No.

5 Q. Did you do any tests to determine what was inside
6 the trucks?

7 A. No.

8 Q. So is it fair to assume -- sorry. Is it fair to
9 say that your conclusion as to what was in those trucks was
10 an assumption based on the appearance of the outside of the
11 truck?

12 A. That and where it came from.

13 Q. You mentioned that when you -- you mentioned that
14 you stopped floating the Illinois River because you said
15 they told you about pollution. Can you tell me who they
16 is?

17 A. Just the different scientists and lawyers that
18 were working this. I don't know who the exact names are.
19 I'm not a name person. If I don't deal with you every day,
20 I'm not gonna remember your name. That's just a weakness I
21 have. But anyways, no. They just were talking about the
22 excessive -- you know, how -- how the river used to be and
23 where it's going and where it's at and it just turned my
24 stomach. I just don't care to be in it.

25 Q. And they is scientists and lawyers associated with

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1 this lawsuit?

2 A. Yes.

3 Q. Would that be lawyers with Riggs -- Riggs Abney?

4 A. No. As far as I know, I don't know if they were
5 involved in this early on or not.

6 Q. Do you know what firm those lawyers were
7 associated with?

8 A. No, I do not.

9 Q. Do you know who they were representing?

10 A. Just the State of Oklahoma.

11 Q. I believe you stated that you were told these
12 spreader trucks needed some decontamination procedures. Is
13 it your understanding that those procedures need to be done
14 in every situation and applied equally to every poultry
15 farm?

16 A. Yes.

17 Q. Do you know what -- some of your notes refer to a
18 secured farm. Do you know what a secured farm is or can
19 you tell me what it is?

20 A. My understanding and explanation that was given to
21 me that secured meant that unless you were -- went to their
22 decontamination or whatever they did for their trucks to
23 enter the farm that came from somewhere else, that that had
24 to be cleared before they would let it close enough to the
25 chicken houses to prevent the spread of disease among their

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1 birds.

2 Q. So is it your understanding that every farm is a
3 secured farm?

4 A. No, it is not. I don't believe that all farms are
5 secured farms.

6 Q. Okay. Can you explain that to me?

7 A. Well, because we could -- we could see some farms
8 that would actually go through a decontamination. We'd
9 seen them spraying something. I don't know what it was.
10 It could have just been water. I don't know. But, you
11 know, going through the motions of trying to clean the
12 trucks as best they could before they delivered birds or
13 whatever they were delivering.

14 And then there were other farms that didn't
15 have any kind of gates or fences or anything. There were
16 different animals intertwining with the chickens and the
17 houses. There were workers coming in, trucks coming in
18 straight off the road driving around that to my -- to my
19 knowledge, that secure meant it was secure meaning clean is
20 what was my understanding.

21 Q. Okay. So your understanding is that a secured
22 farm is one in which decontamination procedures are done?

23 A. Are being followed.

24 Q. And livestock is prohibited from mingling with the
25 poultry; is that correct?

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1 A. Yes.

2 Q. Do you know what a biosecurity farm is?

3 A. No.

4 Q. Do you have any independent recollection of any
5 activity of growers associated with George's?

6 A. No.

7 MS. LLOYD: That's all the questions I have.

8 EXAMINATION

9 BY MR. MIRKES:

10 Q. Hello, ma'am. My name is Craig Mirkes. I
11 represent Peterson Farms. We met a little bit earlier.
12 And I'm gonna try to make my examination quick so we can
13 get you on -- onto your job. As soon as I said that, I
14 lost my place when I moved, so I apologize.

15 Going back to where Dr. Fisher went out into
16 the field and met you guys and I guess at one point you
17 looked at a pond and he told you about algae --

18 A. Yes.

19 Q. Do you remember that discussion? And you said
20 there was other people with him. Did I write that down
21 correctly?

22 A. Yes.

23 Q. And -- but you don't know who those people were?

24 A. No.

25 Q. If I say a few names, do you think names might --

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1 A. It might jog my memory, but I don't know if they
2 were at that point or at another point during the
3 investigation.

4 Q. I'll say names generally and not time it back to
5 that.

6 A. Okay.

7 Q. Do you know who Louis Bullock is?

8 A. Yes.

9 Q. Who's Louis Bullock?

10 A. He was one of the lawyers that was out there with
11 us.

12 Q. He went out into the field?

13 A. Not -- I mean, was a part of the operation. He
14 wasn't always in the field, no.

15 Q. But he maybe -- was he there with Bert Fisher on
16 the day that you reviewed the pond?

17 A. I believe it was that day. I do remember him
18 coming out at one time, but I don't know if it was that
19 particular pond.

20 Q. Did he say anything with respect to algae and --

21 A. Not to my recollection. I don't recall that.

22 Q. And we've already discussed Rick Garren. Was Rick
23 Garren ever out in the field?

24 A. I remember meeting Rick early on, but I don't
25 remember seeing him in the field.

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1 Q. Do you recall meeting with or seeing Rick Garren
2 other than some of the meetings we've discussed, the
3 introductory meeting and then the meeting that happened, I
4 guess, last week?

5 A. That is about the only two times that I remember
6 seeing him.

7 Q. Do you know who David Page is?

8 A. No.

9 Q. Randy Miller?

10 A. No.

11 Q. Do you know who Larry Hight is?

12 A. No.

13 Q. Going back to the -- I've written down huge pile.
14 I don't know if that's how you described it or not. If I
15 say huge pile, do you know what I'm talking about?

16 A. I do.

17 Q. Okay. It obviously made an impression on you.
18 Where was this pile?

19 A. I can't tell you exactly where it was. I don't
20 even know if it was on the Oklahoma line or the Arkansas
21 line. I can't --

22 Q. So do you even know if it was in the Illinois
23 River Watershed?

24 A. It was in the watershed because that's the only
25 place that we worked.

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1 Q. Is it possible that you may have been outside of
2 the watershed and you didn't know it?

3 A. I don't think so.

4 Q. Okay. I'll represent to you that I've got some
5 reports that based upon everything I know, there's farms
6 that you reviewed that are outside of the watershed.

7 A. Okay.

8 Q. Does that change your answer?

9 A. Well, then it might be. I just --

10 Q. Okay.

11 A. I thought that we were only looking at farms
12 within the watershed --

13 Q. Understood.

14 A. -- according to our maps.

15 Q. Understood.

16 Back to the big pile.

17 A. Okay.

18 Q. Did you ever see where that came from, the source?

19 A. No, I did not.

20 Q. So you -- did you ever see them add to the pile or
21 create the pile?

22 A. I did not, no.

23 Q. Did somebody that you know of?

24 A. I don't know. I know that it was not there like
25 the week before or another time that had been observed

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1 earlier. Whether it's a day or week, I can't tell you
2 that, but then it appeared. So I don't know when, if
3 anybody observed that or not. My team did not.

4 Q. Okay. And how -- how far away from your vantage
5 point were you from the pile?

6 A. Very close. It was -- the houses were actually
7 close to the road. I remember a bend in the road and
8 coming around the bend and there it was.

9 Q. It's like Disney World?

10 A. Yeah, I'll tell you. But it was real close to the
11 fence line so I would say within, oh, at least 20 to 30
12 feet from the roadway. It was pretty close.

13 Q. How do you know it was litter?

14 A. With all the chicken feathers and you can just see
15 it and cake mixed into it, the white part that they
16 described to us, so -- and the odor.

17 Q. Based upon what you were taught were violations,
18 was that a violation?

19 A. It wasn't necessarily a violation.

20 MR. WILKERSON: Object to the form.

21 Go ahead.

22 THE WITNESS: Go ahead?

23 MR. WILKERSON: Yeah.

24 THE WITNESS: Okay.

25 A. It wasn't necessarily a violation in my eyes. It

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1 just was the most I've seen on the whole thing that we did.
2 But later on when it rained and it was uncovered, that is
3 when it was explained to me that it was a violation, not
4 the -- necessarily how much was there because it could have
5 been distributed throughout several places.

6 Q. Did you report that to anybody?

7 A. Report what?

8 Q. When you said it rained, that was a perceived
9 violation by you. Did you report that perceived violation
10 to anybody?

11 A. It was documented through our pictures that it was
12 raining at the time. I don't know if you're talking about
13 the specific report like calling in someone. No, I did not
14 do that.

15 Q. You didn't call --

16 A. It was just documented.

17 Q. I'm sorry to interrupt.

18 A. You're fine.

19 Q. You didn't call the Oklahoma Department of
20 Agriculture?

21 A. No.

22 Q. You didn't call the Arkansas Department of
23 Agriculture?

24 A. No.

25 Q. You didn't call either state's environmental

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1 quality or I don't know what Arkansas calls it -- you
2 called no state agency for either the state of Oklahoma or
3 Arkansas?

4 A. That's correct. My team did not.

5 Q. Okay. Thank you.

6 You said earlier, I believe, that there was a
7 master list of places to visit and your description was Joe
8 Blow at X is what your testimony was. That's what I wrote
9 down, so -- and I was just curious. Is Joe Blow -- was
10 that -- was that a grower name or was that an integrator
11 name?

12 A. It was just the farm names that we had. I think
13 it just came from our original compilations if it was a
14 working or nonworking farm.

15 Q. Okay. Thank you.

16 One other question about the visit where --
17 because it sounds like it was abnormal that Bert Fisher or
18 Lou Bullock would come out and visit with you guys in the
19 field.

20 A. That's correct.

21 Q. Do you have a recollection of when that visit was
22 or when those visits were?

23 A. No, I do not.

24 Q. Was that early on in your investigative work or --

25 A. Well, I can tell you it's not towards the end

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1 because we were just too busy running around all the time.
2 I would -- if I had to give you a time line, I would say
3 that it was at the end of 2005 because that's when we
4 started. Yeah, that fall.

5 Q. Did anything change that you know of that they
6 would come out into the field, excuse me, and visit with
7 you guys?

8 A. The only reason that I can think of is that we
9 were going to do something to start logging what we saw in
10 water. Before it was just chicken houses. And -- so I
11 don't know if they came out to show us what to look for, to
12 actually point out that's what we're looking for, you know.
13 I don't know. It wasn't anything big in my mind, but, you
14 know, I don't know what he said to the other.

15 Q. So it was kind of like in-the-field training as
16 opposed to in the --

17 A. A little bit and just to visit and see how we're
18 all doing, you know, just kind of touch base, really. I
19 don't think it was anything formal.

20 Q. We covered this a little bit and you -- and what
21 I'm getting to is Hazmat, your Hazmat training and Hazmat
22 gear. In the photos I've seen, you've -- you photographed
23 a lot of spreading events. Is that an accurate
24 characterization?

25 A. Yes.

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1 Q. And in some of the photos, it appears that you got
2 pretty close to those spreading events; is that true?

3 A. That's true.

4 Q. How close did you get?

5 A. True enough where we had to roll the windows up
6 and shut off the vents because it was about ready to
7 overtake us.

8 Q. So it was -- did any of that litter hit you or
9 touch you?

10 A. Yes.

11 Q. Did you report that to anybody?

12 A. No.

13 Q. Did that concern you?

14 A. No.

15 Q. Why not?

16 A. It's chicken litter.

17 Q. With respect to -- you were told that -- Bert
18 Fisher instructed you that certain algae in ponds is
19 because of too much chicken litter; is that correct?

20 A. Runoff from overspreading, yes.

21 Q. And you grew up in Okmulgee?

22 A. Okmulgee County.

23 Q. Did you grow up in town or out in the country?

24 A. In the country.

25 Q. Did you live on some land?

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1 A. I did.

2 Q. Did you have a pond?

3 A. We've had ponds, yes.

4 Q. Did they have algae?

5 A. Not that I remember, no.

6 Q. Have you ever seen a farm pond outside of the
7 Illinois River Watershed with algae?

8 A. Yes, I have.

9 Q. Is it your opinion that that's from
10 over-application of chicken litter?

11 A. You know, I think about that now, that it may be.
12 It tends -- and I'll kind of look at it like -- you know,
13 make me do a double-take if I see some algae that it just
14 doesn't seem to be as covering, you know, how it -- the
15 whole pond would look destroyed from the ones that we
16 looked at and those are the ones that we documented that
17 looked like there was just something not right there. It
18 didn't look like a natural pond. So I don't know. You
19 know, I know algae grows from other things, other causes,
20 but, you know, that that makes an excessive and accelerated
21 growth of algae is what I was told. The time of year --
22 they said document the time of year. That at that time the
23 algae shouldn't be that thick versus another time of year.

24 Q. You were told that by Dr. Fisher and Lou Bullock?

25 A. Yes.

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1 Q. This may seem like a silly question. Your father
2 grew cattle, you said.

3 A. He had a few head here and there.

4 Q. Does he then water them from a stock tank?

5 A. In the wintertimes he did, yes, or if we didn't
6 have a pond at that time.

7 Q. So -- well, I'll just ask it this way. Have you
8 ever seen a stock tank with algae in it?

9 A. Yes.

10 Q. What do you think that's from?

11 A. I don't know. Old water, not fresh water.

12 Q. So something other than chicken litter?

13 A. In the stock ponds, yes.

14 Q. Okay. Let's get to the fun part. I'm gonna hand
15 you what will be marked as Exhibit 10.

16 (Exhibit No. 10 was marked.)

17 And I will ask you to look that over.

18 MR. MIRKES: I apologize to Counsel that
19 their copies are not in color, but the witness' is in
20 color.

21 Q. And I'll -- and I'll note that in some of your
22 exhibits, an employee from my law firm went to great pains
23 to try and attach a frame number associated that was
24 written on that investigation sheet.

25 A. Okay.

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1 Q. What I will ask you to do, however, is the way the
2 State produced those to us, it wasn't 100 percent clear.
3 So if you see something that you think is inaccurate, I'd
4 like for you to point that out to me. Okay?

5 A. Okay.

6 Q. Thank you. Are you ready for me to ask you a few
7 questions about this?

8 A. Yes.

9 Q. Okay. This appears to be an investigation sheet
10 from June 30th, 2005; is that correct?

11 A. Yes.

12 Q. And this has you listed as one of the observers;
13 correct?

14 A. Yes.

15 Q. Is this your handwriting?

16 A. Yes, it is.

17 Q. Okay. And this is the -- I don't even know how to
18 say it. I see it all the time. Yacobo Farm is how I guess
19 I would say it and that's a Peterson grower. And I'd ask
20 that you turn to Frame No. 1053, which is the last photo.
21 And the description that you have written down here is used
22 uncovered litter pile; is that correct?

23 A. Yes.

24 Q. How do you know that that's a used uncovered
25 litter pile?

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1 A. The way that it looks like it's been scraped with
2 a front-end loader and just the remains of feathers and
3 litter there from our observation is what it appears to be.

4 Q. You didn't take any independent samples or test
5 that --

6 A. No.

7 Q. -- what you determined was a litter pile?

8 A. No.

9 Q. Does it also look like a pile of dirt?

10 A. Not with the feathers and the things that were in
11 it. That was one of the things that I kind of asked about
12 early on. You know, well, how do we tell? And they said
13 well, look closer and use your zoom-in and you can see
14 feathers and things in the -- and they're asking to
15 (inaudible), then it's most likely a litter pile.

16 Q. And you just brought up a question that's kind of
17 unrelated. Were you given a laser to determine distance,
18 laser distance finder?

19 A. I was not, no.

20 Q. Did anyone else that you're aware?

21 A. Not that I'm aware of. But, again, they continued
22 investigations after I left the team.

23 Q. Okay. Were you given a set of binoculars?

24 A. Yes.

25 Q. Okay. Do you have any other independent

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1 recollection of this farm other than what's written on
2 these -- on this sheet?

3 A. No, I do not.

4 Q. Okay. Now I'm gonna hand you what is going to be
5 marked Exhibit 11. I'd ask that you take a look at that
6 one for me.

7 (Exhibit No. 11 was marked.)

8 A. Okay.

9 Q. Ready?

10 A. Uh-huh.

11 Q. This appears to be an investigation report written
12 by you. Is this your handwriting?

13 A. Yes, it is.

14 Q. Dated 5/5/2005; is that correct?

15 A. Yes.

16 Q. And this is the -- it says the other farm,
17 Peterson. And if you look at Frame 513, that's what that
18 sign says; correct?

19 A. Yes.

20 Q. Do you know what watershed the other farm is in?

21 A. I assume Illinois.

22 Q. Based upon what you were given?

23 A. Yes.

24 Q. Okay. And then the following photos and your
25 description, why don't you just kind of tell me what you

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1 described in these photos.

2 A. The farmer or worker scooping up a lot of dead
3 chickens and mixing them in with a litter pile and then
4 covering them up with the litter pile.

5 Q. Okay. I have a couple questions about that.

6 A. Okay.

7 Q. One, did you see the source of the chickens?

8 A. What I have here is -- no, I don't know where the
9 dead chickens came from.

10 Q. Okay. And then did you see the source of the --
11 what you describe as litter?

12 A. Where the litter came from?

13 Q. Correct.

14 A. No, I did not.

15 Q. Okay.

16 A. It was already in place.

17 Q. And just -- I'm surmising from your photographs.
18 I'm gonna look at Frame 514. The pile of material on the
19 left side of that frame --

20 A. Yes.

21 Q. -- is that what you're characterizing as litter?

22 A. Yes.

23 Q. Okay. Is this a violation as it was described to
24 you?

25 MR. WILKERSON: Object to form.

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1 A. I don't know if that's a violation or not. I
2 don't know how they dispose of their dead chickens. I know
3 that some of them are incinerated, but I don't know if
4 they're allowed to bury or not. I don't know.

5 Q. (BY MR. MIRKES) Okay. And I note on this one you
6 wrote all documentation of evidence true and accurate to
7 the best of my knowledge and you signed it and dated it. I
8 believe the question was just asked about that. I was
9 gonna ask the same question. I didn't see that on every
10 form that you filled out.

11 Why on some forms did you put that legend and
12 some you did not?

13 A. Well, what I can remember on this is we didn't at
14 first and Steve asked that we start doing that, so we did.
15 If we had -- I think we did it at the end of the notebook.
16 We got to the point where we were taking so many notes that
17 at the end of the day, we would just sign off on the one
18 that was the last farm we checked or end of the notebook,
19 we could sign out there. I think all the notebooks will
20 have something in it that says that everything in this
21 notebook, however they put them together, how many forms
22 they to put each one, that they were all true to the best
23 of our knowledge.

24 Q. Okay. Other than what you have documented here,
25 is there -- do you have any other independent recollection

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1 of this farm?

2 A. No, I do not.

3 Q. Okay. I believe we're done with that one. I'm
4 gonna hand you what is being marked as Exhibit 12.

5 (Exhibit No. 12 was marked.)

6 And this one has got a lot of photos attached
7 and I'll just -- you know, you certainly feel free to flip
8 through. Many of the photos appear to be very similar.

9 A. Okay.

10 Q. Ready?

11 A. Uh-huh.

12 Q. Excuse me. This -- we'll just go through the same
13 exercise. This is a report that was made on 5/4/2005.
14 It's got your name. Is this your handwriting?

15 A. Yes, it is.

16 Q. And Line 1 under notes says, Unruh Moore Peterson,
17 Waypoint 3. Did I read that correctly?

18 A. Uh-huh.

19 Q. I assume -- I won't assume. What relevance does
20 that have to this investigation sheet?

21 A. Okay. That means it came from -- if we logged it,
22 we visited the farm at Waypoint 3, Moore. So instead of us
23 having to redocument it here, to refer back to Waypoint 3
24 to get the location of where this truck is coming from.
25 Does that make sense to you?

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1 Q. Well, so am I correct in that the spreading
2 activity you're documenting with this report, you're saying
3 the source is the Unruh Moore farm? Is that --

4 A. Yes, yes.

5 Q. Okay. Do you know what watershed the Unruh Moore
6 farm is in?

7 A. I assume it's the Illinois.

8 Q. On here you -- you note towards the bottom of
9 that, it says return to WP3, which I assume is Waypoint 3,
10 and then you give times and you did a series of those.

11 A. Uh-huh, yes.

12 Q. It appears that it's going back and forth from the
13 farm to the field.

14 A. Yes.

15 Q. Did you follow the truck back and forth, back and
16 forth?

17 A. Yes.

18 Q. Were you about to say something?

19 A. Well, because there's a couple of them that, you
20 know, they're coming back to my mind, ones that were like
21 this that continued to go back to the same place. There
22 was one where we could sit and see the farm that they went
23 to and then they would come back to this field. So I don't
24 know if it was that one or not. But if it was not that
25 one, we do -- we did not lose sight of that truck. That's

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1 why we documented it. We wanted to show that we were with
2 that truck the whole time.

3 Q. With this one, there's a whole series of pictures
4 of the spreading activity.

5 A. Yes.

6 Q. What there are no pictures of is this truck being
7 loaded; is that correct?

8 A. That is correct.

9 Q. How -- how do we know that the Unruh Moore farm
10 was the source?

11 A. What we can tell you is that truck kept returning
12 to that source. And it went in empty and it came out full.

13 Q. Okay.

14 A. So regardless if we saw it actually being loaded,
15 that's where we assume the source was coming from.

16 Q. Very good. Thank you.

17 Then you note several times -- I mean, I can
18 point to several different spaces. But down here it says
19 second application and then -- well, second application,
20 third application, same location; do you see that where you
21 note the -- well, let's look up here. I'm gonna direct you
22 to the top right-hand box.

23 A. Okay.

24 Q. Photo Frame No. 1447 to 55 says first app 100
25 years. Does that mean first application?

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1 A. Yes.

2 Q. And then just below that it says second
3 application?

4 A. Yes.

5 Q. Is an application just another load?

6 A. Okay. Let me look at this for a second.

7 Q. Okay.

8 A. Yes. That it had returned back to Waypoint 3, got
9 another load and come back. It's coming back to the same
10 plot of land that we were at. And he spread once, he left,
11 done his refill, come back and spread twice and did that
12 throughout the day.

13 Q. So if I analogize this to painting, he's not
14 putting on a second coat, he's just refilling so that he
15 can continue his job; is that accurate?

16 A. But he keeps going over the same -- this is very
17 small field. It's around this little electrical --
18 whatever this thing is here. This little thing that was
19 fenced is very small. It's not several acres. He keeps
20 returning to the small area. Now, I can't tell you exactly
21 how big the area is, but it was -- in my mind, it was a
22 second application not just because I ran out, I need to
23 finish this quarter of it. He kept going over the same
24 plot.

25 Q. So he kept -- well --

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1 A. Applying over the same places he'd already applied
2 previously.

3 Q. And you could tell that from your vantage point
4 where these photographs were taken?

5 A. Yes.

6 Q. Okay. Did you take any samples at that location?

7 A. No.

8 Q. This is one where I see you're pretty close. Is
9 this one where it got pretty dusty on you?

10 A. It could be. There were a lot of them that we
11 learned quickly on to roll up the windows.

12 Q. Any violations, as they were described to you,
13 that you see in this?

14 A. Just --

15 MR. WILKERSON: Object to form.

16 THE WITNESS: I'm sorry.

17 MR. WILKERSON: That's okay.

18 A. Just the repetitiveness, that there was so much
19 that was spread in that small area, to me is what we were
20 looking for to try to find a violation.

21 Q. (BY MR. MIRKES) Did you report this to the State
22 of Arkansas?

23 A. No.

24 Q. If it was a perceived violation, why didn't you
25 report it to the State of Arkansas?

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1 A. We were told to just give our information back and
2 they would take it from there. So I don't know if they
3 reported it once they got our notes. I don't know --

4 Q. I've got --

5 A. -- what their protocol was.

6 Q. Again I apologize for interrupting.

7 Can I direct you back to Bates No. 8463 and
8 8464.

9 A. Yes.

10 Q. You're a patrol officer; is that correct?

11 A. Yes.

12 Q. Is that a violation of law? If you saw this truck
13 in Tulsa, is that -- would you pull that truck over?

14 A. You could, yes, for unsecured load if it was
15 actually blowing off. I don't recall how fast this truck
16 was going at the time, if the litter was blowing off. It
17 is supposed to have been covered in transport.

18 Q. Did you call it in?

19 A. We documented it and most likely called Steve on
20 it. So I don't know if Steve called it in or not. I did
21 not have those numbers to do that.

22 Q. Okay. I believe I'm done with that one. This is
23 my final one, you'll be happy to know.

24 A. Okay.

25 Q. This one will be marked as Exhibit 13.

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1 MR. MIRKES: I don't want to cover anything
2 up. I'm gonna put it on sideways. Is that okay with you?

3 THE REPORTER: That's fine.

4 (Exhibit No. 13 was marked.)

5 Q. (BY MR. MIRKES) I hand you what's been marked as
6 Exhibit 13. If you'll take just a moment to review that
7 for me, please. And just tell me when you're ready.

8 A. Okay.

9 Q. Okay. This is an investigative report done on
10 5/5/2005; is that correct?

11 A. Yes.

12 Q. It's got you listed as one of the observers. Is
13 this your handwriting?

14 A. Most of it is.

15 Q. Most of it is. But all --

16 A. The notes are, yes.

17 Q. Okay. And this -- you say it's the first dry
18 spreader truck from yesterday. I'm pretty sure what we
19 just looked at. In fact, it is from the exhibit we just
20 went through.

21 First question, the -- can you tell me where
22 the source of this litter -- what -- what is the source of
23 this litter?

24 A. Okay. Well, I think we picked it up -- picked up
25 on it while it was spreading and watched it spread and then

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1 watched it go back to Waypoint 5, which I have noted as
2 Peterson Farm, Circle Farm, Wilma Circle. Oh, that's the
3 -- that's the address, but it was Peterson Farms Circle
4 Farm.

5 Q. Okay.

6 A. And then from there, it went back to Waypoint 4.
7 So the source on the second application was from Waypoint
8 5, which is the Peterson Farm.

9 Q. Okay. Again, in this series of photographs, I
10 don't recognize any loading photographs. Is that -- is
11 that what you see as well?

12 A. Yes.

13 Q. So the same scenario, I see you do have photos of
14 a -- of a litter shack, the very last -- very last
15 photograph. So it appears you could at least see the
16 litter, where the litter source was, but you have no
17 photographs of the litter being loaded in the truck?

18 A. I don't have photographs of that, but up here I do
19 have written down the litter shed source. So I don't know
20 if we couldn't get to a point to photograph. I don't know
21 how to answer that one. All I can tell you is that the
22 truck went in empty and came -- and came out full from that
23 farm.

24 Q. But you never actually witnessed it being loaded
25 from that source?

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1 A. That's correct.

2 Q. Okay. Again, we see you -- and I'm gonna direct
3 you to the top right corner again. I see a second -- first
4 application, second application, third application, fourth
5 application. Did I read that correctly?

6 A. Yes.

7 Q. And if I look at the photographs from this -- this
8 spreading event, you have a much different vantage point.
9 The field appears, to me at least, to be rather large. Is
10 that -- is that kind of an accurate characterization of
11 this field?

12 A. You know, I don't remember where this one was,
13 actually. But it does appear to be larger than the one
14 that we were watching it do the day before. I think it's
15 nearby.

16 Q. You even note here that it's in the same area.

17 A. Okay.

18 Q. But yet you still use application. And the way
19 you just described to me application as -- as kind of a
20 coat of paint. Is it your testimony this truck went around
21 in the same path applying on the same area in this field?

22 A. Yes, yes.

23 Q. So it didn't cover the entire field, it just
24 covered a strip and went over the same strip over and over;
25 do I understand you correctly?

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1 A. When I say second application, that's what I mean
2 is that it's not a continuation. It's over the same area
3 that he's already spread.

4 Q. Okay.

5 A. Respreading the same area.

6 Q. Is it when he -- and I'll just try and clear this
7 up a little bit. He returns to Waypoint 4 and returns to
8 Waypoint 5. I assume that every little star down here is
9 returning back to the litter source, getting another load
10 and then coming back?

11 A. That's correct.

12 Q. Okay. Do you know if he could cover the entire
13 field with one load? Do you recall that?

14 A. I don't know. Different fields were different
15 sizes. But, you know, I have this documenting times on
16 this, that it was taking him about 20 minutes to go back
17 and get another load and, you know, it took him 15 to 20
18 minutes to spread it, he just kept doing this back and
19 forth. I don't know how big that field was.

20 Q. Based upon violations as they were described to
21 you, is this a violation?

22 MR. WILKERSON: Object to form.

23 A. Yes, I believe it was.

24 Q. (BY MR. MIRKES) Did you report it to anybody?

25 A. No, I did not.

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1 Q. Why did you not report it?

2 A. We were instructed to give all of our information
3 to Steve Steele and he would take it from there.

4 Q. Was it your understanding Steve Steele was gonna
5 report it to the appropriate authorities?

6 A. I didn't know if anybody was gonna report it
7 anybody.

8 Q. Okay. I want to direct your attention to photo --
9 Bates No. OK-PL-0008494. What does that depict?

10 A. It's a pond. Let me see what --

11 Q. I believe it matches the Frame 476, although this
12 is one we didn't have time to go back and --

13 A. Okay. And it just states that there's a pond in
14 the field that was being spread around.

15 Q. Okay. Did you see algae in that pond?

16 A. It is not documented, but I did. I think it's
17 just showing that there's a water source there. I do not
18 see an overgrowth of algae in the picture.

19 Q. So based upon Bert Fisher and Lou Bullock, there's
20 not been an over-application on this field?

21 A. At that point.

22 Q. Very good.

23 Do you have any independent recollection of
24 visiting other Peterson contract growing farms? When I say
25 visit, I mean investigate or continue this work.

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1 A. You mean that we were watching different --

2 Q. Correct.

3 A. Yes. I mean, we had -- I mean, I couldn't tell
4 you which farm was which, but I know that we -- we hit all
5 of them and several times.

6 Q. Do you have any independent recollection of a
7 violation as it was explained to you of any of those farms?

8 A. Not independently, no.

9 Q. What about any litter that was sourced from a
10 Peterson contract growing farm, do you have any independent
11 -- pardon me. Let me back up. Any independent
12 recollection of a violation as it was described to you of
13 the use of that litter?

14 MR. WILKERSON: Object to form.

15 A. I do not.

16 MR. MIRKES: I appreciate your time today and
17 I will pass the witness.

18 MR. FREEMAN: I guess I'm next.

19 EXAMINATION

20 BY MR. FREEMAN:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. I'm Bruce Freeman and I'm here for defendant
24 Simmons. And you'll probably be pleased to know that I
25 don't have any big piles of paper with your name on the top

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1 about Simmons by name so hooray for you.

2 A. Okay.

3 Q. So my questions will be pretty brief probably.

4 Let me ask you while we're here since Simmons
5 is my client, do you have any independent recollection of
6 visiting any farms that you understood were people growing
7 for Simmons? Does that stand out in your mind at all?

8 A. No.

9 Q. Let me ask you about some folks who are not here
10 who are also in the case. Do you have any recollection of
11 visiting any poultry farms where the farmers, you
12 understood, were growing chickens for Tyson?

13 A. Do I have any independent --

14 Q. Yeah.

15 A. No.

16 Q. That stand out. Okay. How about Cal-Maine?

17 A. No.

18 Q. How about Willowbrook?

19 A. No.

20 MR. FREEMAN: That all of us. I think I got
21 all of those from memory. That's good.

22 Q. Okay. I probably don't have very much, then. Let
23 me spin through my notes real quick here.

24 Did you have any time in the airplane?

25 A. No.

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1 Q. Did you ever communicate with the airplane?

2 A. We tried through two-way radios and that didn't
3 work, so I did not. I think they finally had to result to
4 cell phones. It was very difficult for, at last my team,
5 to work with the planes. But I don't know exactly what the
6 planes did.

7 Q. Okay. At least just confining it to your team
8 when you-all established contact with the airplane, what
9 were you doing with the plane?

10 A. If he spotted active spreading that was close to
11 where we were, he would try to give us GPS coordinates so
12 we could go to it and get it on film.

13 Q. So he was like factoring in on locations?

14 A. If he could, yeah.

15 Q. Did you have any run-ins with people while you
16 were out in the field, you know, altercations, chases,
17 anything like that?

18 A. Yes.

19 Q. What do you remember about that kind of thing, a
20 little more detail?

21 A. There was one point where I remember driving
22 backwards to get away from a spreader truck that was trying
23 to ram us. There was another time that I was filming and
24 was given the friendly bird from the driver of a spreader
25 truck. Another time -- those two didn't alarm me as much

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1 as one time that really stands. We were at a convenience
2 store for a restroom break, getting something to drink, and
3 two spreader trucks came in and tried to block me and Rod
4 in and were very angry. We had to do some quick
5 maneuvering to get out of that. But we didn't actually
6 speak to anybody. It was all just vehicular kind of chase.
7 Nobody -- as long as I was with Rod or with anybody else
8 that I was spoken to by anybody or threatened by anybody
9 other than trying to figure out what we're doing, so --

10 Q. Was the only person that you talked to about what
11 you were doing the fellow you've already testified about
12 who came out to see what y'all were doing and you discussed
13 with him --

14 A. Yes.

15 Q. -- documenting?

16 A. Yes.

17 Q. Okay. Where were you when the two spreader trucks
18 tried to box you in by the convenience store?

19 A. I don't know what town it was. We went so many
20 places. I know Rod could tell you right off the top of his
21 head because he's good at that.

22 Q. And apparently you guys successfully avoided being
23 boxed in?

24 A. Yes.

25 Q. How about the time you were going backwards, do

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1 you remember what state you were in?

2 A. No. We could have crossed lines there. I don't
3 know.

4 Q. And apparently the fellow who flipped you off
5 didn't talk to you?

6 A. He said all he needed to with sign language.

7 Q. They just told me I have five minutes of tape, but
8 I think I'll get done in five minutes.

9 Were you in both Oklahoma and Arkansas?

10 A. Yes.

11 Q. Okay. Did you go armed?

12 A. Yes.

13 Q. When you saw Mr. Fisher that we talked about, was
14 he ever by himself in a vehicle or did he come out alone?

15 A. Not that I recall.

16 Q. Was he always with somebody then?

17 A. Yes. Like I said, I only remember seeing him
18 maybe two times in the field, you know, other than meetings
19 that we had.

20 Q. Was he usually with Mr. Bullock?

21 A. I only remember seeing Bullock one time.

22 Q. Do you know who he was with the other times?

23 A. No.

24 Q. Did he ever ride along with you guys?

25 A. No.

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1 Q. You took photographs of water bodies?

2 A. Yes.

3 Q. Okay. Did you ever leave the vehicle and walk out
4 on foot to get closer to a water body to take pictures?

5 A. Yes.

6 Q. Did you ever cross onto anybody's farm or field to
7 do that?

8 A. I did not.

9 Q. Was it always, like, from a roadway?

10 A. Yes, or bridge or something.

11 Q. You talked about maybe someone picked up a dead
12 chicken with rubber gloves. Does that sound familiar?

13 A. Yes.

14 Q. Would that have been your team?

15 A. Yes.

16 Q. Okay. And what was the occasion for picking up
17 the chicken?

18 A. It was to play a joke on somebody else on the
19 team.

20 Q. Okay. Was it, like, a chicken in the road or
21 something?

22 A. The chicken was on the road.

23 Q. Who did the picking of the chicken?

24 A. That would be Rod.

25 Q. Okay. But it wasn't really part of an

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1 investigation as such?

2 A. No.

3 MR. FREEMAN: You know, I think I made it
4 inside the five minutes of the tape. I'm done. There'll
5 be some discussion with you later about the transcripts and
6 stuff, but thanks for coming.

7 Anybody else? I'll just pass you on.

8 MS. LLOYD: I have one question.

9 MR. WILKERSON: I have some questions, too.

10 MS. HILL: Do you want to let her go back and
11 then we'll take a break and you can ask your questions?

12 MR. WILKERSON: That's fine.

13 FURTHER EXAMINATION

14 BY MS. LLOYD:

15 Q. Aside from the witness fee and mileage, are you
16 being compensated for your time here today?

17 A. No.

18 MS. LLOYD: That's all I have.

19 THE WITNESS: Well, that check with -- I
20 mean, what is that with the subpoena?

21 MS. HILL: The witness fee.

22 THE WITNESS: Okay. Then yes, just the
23 witness --

24 MS. LLOYD: Aside from that.

25 THE WITNESS: No, no. Then no. Sorry.

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1 MS. HILL: Okay. We can break.

2 THE VIDEOGRAPHER: We're off the record at
3 3:49 p.m.

4 (Off the record for less than a minute.)

5 (Exhibit No. 14 was marked.)

6 THE VIDEOGRAPHER: This is the start of
7 Videotape No. 3. We are back on the record at 3:50 p.m.

8 FURTHER EXAMINATION

9 BY MR. MIRKES:

10 Q. Hello, ma'am. We just have one more housecleaning
11 item. We've marked Exhibit 14, the document that you
12 brought in as your 1099s; is that correct?

13 A. Yes.

14 Q. Is all the information on that true and accurate?

15 A. Yes, it is.

16 MR. MIRKES: Thank you.

17 EXAMINATION

18 BY MR. WILKERSON:

19 Q. I just briefly have some questions for you.

20 A. Okay.

21 Q. You've talked quite a bit with all the attorneys
22 that have questioned you so far about notes and notes that
23 you've taken; is that accurate?

24 A. Yes.

25 Q. And what was your general practice for time frame

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1 in taking these notes compared to when you made the
2 observations?

3 A. It was made immediately as they were happening.

4 Q. And any of the notes, either that we've discussed
5 today or that you took in your course of work on this
6 project, were any those notes taken at a time later than
7 when the observations were made?

8 A. The only course that that would ever been was just
9 within a few minutes if we had to drive to get off the
10 roadway so somebody wouldn't hit us or to go around the
11 corner, but everything was pretty much right as it
12 happened.

13 Q. Were any of the notes that you took while working
14 on this project taken within 24 hours or more after you had
15 made the observations?

16 A. No.

17 MR. WILKERSON: Okay. Thank you. Nothing
18 further.

19 MS. HILL: Do you want to advise her about
20 reading?

21 MR. WILKERSON: That's fine.

22 You have the opportunity -- they're gonna
23 make a transcript, a written transcript of the deposition.
24 You have the opportunity to read and sign that to allow
25 yourself to make corrections of certain types if there's

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1 anything that was misstated or that was maybe a typo or
2 something based upon what you recall saying --

3 THE WITNESS: Uh-huh.

4 MR. WILKERSON: -- during your testimony or
5 you can waive that right. It's your choice. And to be
6 honest with you, we've been leaving that up to what each
7 individual witness wants to do. If you're confident with
8 what you said, then tell them you waive. But if you want a
9 chance to read over it and sign it first --

10 THE WITNESS: Okay. I'm fine with what I
11 said.

12 MR. WILKERSON: Okay. I believe she'll
13 waive.

14 THE WITNESS: I'll waive.

15 THE VIDEOGRAPHER: We're off the record at
16 3:52 p.m.

17 (End of proceedings at 3:52 p.m.)
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1 STATE OF OKLAHOMA)

2 I, Lisa Smith, a Certified Shorthand Reporter in and
3 for the State of Oklahoma, do hereby certify that, pursuant
4 to the agreement hereinbefore set forth, there came before
5 me on the 9th day of April, A.D., 2009, at 1:01 p.m., in
6 the offices of Rhodes, Hieronymus, Jones, Tucker & Gable,
7 PLLC, located at 100 West Fifth Street, Suite 400, in the
8 City of Tulsa, State of Oklahoma, the following named
9 person, to wit: LIZ WEATHERLY, who was by me duly
10 cautioned and sworn to testify the truth, the whole truth
11 and nothing but the truth, of her knowledge touching and
12 concerning the matters in controversy in this cause; and
13 that she was thereupon carefully examined upon her oath,
14 and her examination was reduced to writing under my
15 supervision; that the deposition is a true record of the
16 testimony given by the witness; signature of the witness
17 being waived pursuant to agreement of the parties; and that
18 the amount of time used by each party at the deposition is
19 as follows:

20 Ms. Hill - 01 hours, 51 minutes,

21 Ms. Lloyd - 00 hours, 07 minutes,

22 Mr. Mirkes - 00 hours, 35 minutes,

23 Mr. Freeman - 00 hours, 06 minutes,

24 Mr. Wilkerson - 00 hours, 01 minutes.

25 I further certify that I am neither attorney or

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1 counsel for, nor related to or employed by, any of the
2 parties to the action in which this deposition is taken,
3 and further that I am not a relative or employee of any
4 attorney or counsel employed by the parties hereto, or
5 financially interested in the action.

6 I further certify that, before completion of the
7 deposition, the Deponent _____, and/or the
8 Plaintiff/Defendant _____, did _____ did not _____ request
9 to review the transcript.

10 In witness whereof, I have hereunto set my hand and
11 affixed my seal this 21st day of April, A.D., 2009.



12 

13 LISA SMITH, OK CSR 01778

14 Expiration Date: 12/31/2009

15 Esquire Deposition Solutions

16 Firm Registration No. 286

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